STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1320

State of Minnesota,
Respondent,

vs.

Amber Marie Troxell,
Appellant.

Filed July 20, 2010
Affirmed in part, reversed in part, and remanded; motion denied
Minge, Judge

Ramsey County District Court
File No. 62-CR-08-6272

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Gerald T. Hendrickson, Interim St. Paul City Attorney, James F.X. Jerskey, Assistant City Attorney, St. Paul, Minnesota (for respondent)

Melissa Sheridan, Assistant State Public Defender, Eagan, Minnesota (for appellant)

Amber Troxell (pro se appellant)

Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Hudson, Judge.

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

MINGE, Judge

In challenging her convictions of disorderly conduct and obstructing legal process with force, appellant argues that the district court (1) prejudicially erred when it read the

probable-cause section of the complaint to the jury panel; (2) denied appellant a fair trial by questioning the state's primary witness; (3) improperly charged the jury on the gross-misdemeanor conviction of obstructing legal process when it omitted the phrase "with force"; and (4) violated the statutory prohibition against multiple punishments by imposing separate sentences for the two convictions, which arose out of the same behavioral incident. We affirm in part, reverse in part, and remand.

FACTS

Ramsey County Sheriff's Sergeant Joann Springer stopped appellant Amber Troxell for failure to stop her car at a stop sign. Springer reported that she followed Troxell for several blocks, unsuccessfully attempting to attract Troxell's attention with the squad car's horn, lights, and siren, and ultimately got Troxell's attention by driving along side Troxell.

The traffic stop began routinely. Springer asked Troxell if she had heard her siren or seen her emergency lights, noticed other cars pull over, or realized she had failed to stop at a stop sign. Troxell responded that she had stopped at the stop sign and had not heard nor seen the other activity. Springer then gave Troxell a ticket for failure to stop. At this point, Springer and Troxell's accounts differ.

Springer testified that Troxell quickly became hostile, used profanity, and was so defiant about receiving a traffic ticket that she bordered on being violent. Springer stated that due to Troxell's rage, Springer asked Troxell to exit the car, that Troxell refused, that Springer told Troxell she was under arrest, and that ultimately they scuffled as Springer pulled Troxell out of her car.

Troxell testified that she was initially calm and polite but that Springer was aggressive and shoved a ticket at her. Troxell admitted that she disagreed with Springer and swore when she realized she had been ticketed and that Springer ordered her out of her car. Troxell claims Springer refused to explain why she ordered Troxell out of her car, agrees that the two struggled as Springer took the keys out of Troxell's ignition and pulled her from the car, and agrees that she swore at Springer as she was placed in the squad car of another officer who had arrived at the scene.

Troxell was charged with gross-misdemeanor offenses of obstructing legal process with force, Minn. Stat. § 608.50, subd. 1 (2006), and assault in the fourth degree, Minn. Stat. § 609.2231, subd. 1 (2006), and the misdemeanor offense of disorderly conduct, Minn. Stat. § 609.72 (2006). After a jury trial, Troxell was acquitted of assault but convicted on the other two counts. The district court imposed a gross-misdemeanor sentence for the obstructing-legal-process-with-force conviction and a misdemeanor sentence for the disorderly-conduct conviction. Troxell appeals.

Troxell filed a pro se supplemental brief. The state filed a motion to strike this pro se brief on the grounds that it fails to address any of the arguments presented on appeal. This court issued an order deferring the state's motion to this panel.

D E C I S I O N

I.

The first issue is whether the district court committed plain error by reading the probable-cause portion of the complaint to prospective jurors as a part of voir dire. Because Troxell did not object to the district court reading this statement, we review for

plain error. Minn. R. Crim. P. 31.02; *State v. Quick*, 659 N.W.2d 701, 717 (Minn. 2003). We correct a plain error if appellants show (1) an error; (2) that is plain; (3) that affected their substantial rights; and (4) that must be corrected to ensure fairness and the integrity of the judicial proceedings. *State v. Vance*, 734 N.W.2d 650, 655-56 (Minn. 2007).

We review a district court's voir dire decisions for abuse of discretion. *State v. Greer*, 635 N.W.2d 82, 87 (Minn. 2001). We do not reverse based on a district court's statements to the jury unless a statement is "so prejudicial to one party that it render[s] a fair and impartial determination by the jury improbable." *Cf. Fortier v. Ritter's Hairdressing Studios, Inc.*, 282 Minn. 382, 386, 164 N.W.2d 897, 899-900 (1969) (holding that a district court's reprimand of defendant's attorney in front of the jury, while improper, was not so prejudicial to the defendant that it made a fair and impartial decision by the jury improbable).

Here, the district court initiated voir dire by, among other things, reading the probable-cause portion of the complaint to the jury. Troxell argues that this was plain error warranting reversal because it (1) unfairly emphasized evidence harmful to Troxell; (2) risked exposing jurors to unreliable and inadmissible evidence; and (3) went beyond a concise outline of the case as required by Minn. R. Crim. P. 26.02, subd. 4. In support of these arguments, Troxell cites the Criminal Jury Instruction Guide (CRIMJIG) 1.01B, claiming that this guide implies that the district court should summarize the *charges* contained in the complaint, rather than read the complaint itself.

Rather than supporting Troxell's argument, Minnesota's pattern jury instructions explicitly provide that "the complaint or indictment *may be read* or summarized at the

court's discretion." 10 *Minnesota Practice*, CRIMJIG 1.01B (5th ed. 2006) (emphasis added). By reading the complaint, the district court exercised this discretion and followed CRIMJIG 1.01B. Moreover, the district court's further comments continued to follow CRIMJIG 1.01B. The district court instructed the jury that the fact that a complaint had been filed was not evidence and did not suggest the defendant's guilt, that the defendant was presumed innocent, and that only proof of guilt beyond a reasonable doubt could overcome this presumption. *See* CRIMJIG 1.01B. Because CRIMJIG 1.01B does not support appellant's argument and because the probable-cause facts the district court read were brief, the district court's statement was not error or unfairly prejudicial to Troxell, let alone "so prejudicial . . . that it rendered a fair and impartial determination by the jury improbable," *Fortier*, 282 Minn. at 386, 164 N.W.2d at 899-900. We conclude that the district court's reading of the probable-cause facts of the complaint to the jury did not constitute plain error.

II.

The second issue is whether the district court asked the state's primary witness a question about whether she thought Troxell would respond to a citation. Troxell argues that the district court committed plain error when it allegedly asked Springer this question. Apparently, the initial trial transcript indicated that the district court posed this question. But the state's attorney, who was also the prosecuting attorney at the trial, recalled that he had asked this particular question and brought the erroneous attribution of this question to the judge to the attention of the court reporter. The court reporter reviewed her notes, listened to the audiotape of that portion of the trial, and concluded

that the prosecutor—not the judge—had asked this question. The court reporter corrected the transcript error and a corrected copy of the page containing the error was filed with this court and served on the parties. Thus, we do not further address this claim of improper questioning.

III.

The next issue is whether Troxell's gross-misdemeanor conviction of obstructing legal process with force should be reduced to the lesser included misdemeanor offense of obstructing legal process because the district court did not instruct that force must be used and the jury did not specify that force was used.

Obstructing legal process is a misdemeanor that can be enhanced to a gross misdemeanor if the jury finds that the obstructive act "was accompanied by force or violence or the threat thereof." Minn. Stat. § 609.50, subd. 2(2-3); *see* Minn. Stat. § 609.02, subds. 2-4 (2008) (defining misdemeanor, gross misdemeanor, and felony). Accordingly, the Minnesota Jury Instruction Guide for obstructing legal process includes a special interrogatory asking whether the obstructive act "was accompanied by force or violence or a threat of force or violence." 10A *Minnesota Practice*, CRIMJIG 24.26 (2009).

"[I]t is well settled that [a district] court's instructions must define the crime charged and the court should explain the elements of the offense . . . ." *State v. Ihle*, 640 N.W.2d 910, 916 (Minn. 2002). Because both the state and Troxell agree that this jury instruction was erroneous and that the conviction should be for the misdemeanor obstruction of legal process, we reverse Troxell's conviction for a gross misdemeanor

and remand the case for entry of a misdemeanor conviction and sentencing on that charge.

IV.

The next issue is whether the district court clearly erred by sentencing Troxell for both disorderly conduct and obstructing legal process. "[I]f a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses . . . ." Minn. Stat. § 609.035, subd. 1 (2006). This single-behavioral-incident rule "protects defendants from both multiple sentences and multiple prosecutions and ensures that punishment [is] commensurate with the criminality of defendant[s'] misconduct." *State v. Williams*, 608 N.W.2d 837, 841 (Minn. 2000) (quotation omitted). The factors used to determine whether the offenses constitute a single behavioral incident are "time, place, and whether the offenses were motivated by a desire to obtain a single criminal objective." *State v. Soto*, 562 N.W.2d 299, 304 (Minn. 1997). The state must show by a preponderance of the evidence that the conduct does not constitute a single behavioral incident. *Williams*, 608 N.W.2d at 841-42. Appellate courts will not reverse a district court's determination of whether the conduct arose from a single behavioral incident unless that determination is clearly erroneous. *State v. Heath*, 685 N.W.2d 48, 61 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). The determination is clearly erroneous if it is unsupported by the record. *Id*.

Here, the disorderly conduct and obstructing-legal-process charges against Troxell stem from a single behavioral incident. Both occurred at the location of the traffic stop.

Similarly, both offenses occurred at the same time: when Springer struggled with Troxell as Troxell tried to remain in her car. Both offenses were also motivated by the same desire: Troxell wanted to stay in her car and avoid arrest. The state argues that because the offenses of disorderly conduct and obstructing legal process are distinctly different, they were not motivated by the same purpose. But the legal test does not focus on whether the offenses have different elements; rather, it focuses on whether Troxell's motive to commit each offense was the same. *State v. Jeter*, 558 N.W.2d 505, 507 (Minn. App. 1997). In *Jeter*, this court reversed the district court's multiple sentences, holding that the offenses of obstructing legal process and giving false information to a police officer arose from a single behavioral incident. *Id*. The reasoning of that case fits here:

> Jeter gave a false name to the police and just moments later physically resisted arrest. . . . Jeter could have performed either of the acts charged without the other. But divisibility of conduct under section 609.035 depends on divisibility of the defendant's state of mind, not separability of his actions. Here, both acts were motivated by the single indivisible desire to avoid arrest.

Id. (citation omitted). Unless an exception to Minn. Stat. § 609.035 applies, the district court's sentencing appellant for both crimes is clearly erroneous.

One exception that respondent asserts is the multiple-victim exception. Obstructing legal process is established as an offense in the portion of the criminal code designated "Crimes Against the Administration of Justice." Minn. Stat. §§ 609.48-.515 (2006). Here, the offense is obstructing Springer in the performance of her official duties. Because obstructing legal process offends the justice system by thwarting the

detection, investigation, or prosecution of a crime, the real victim is public order and society.

A parallel analysis applies to identifying the victim of Troxell's disorderly conduct. That offense occurs in the portion of the criminal code labeled "Public Misconduct or Nuisance." Minn. Stat. §§ 609.687-.7495 (2006). The language of the statute does not even require that the acts of the perpetrator actually "alarm, anger or disturb others or provoke an assault or breach of the peace." Minn. Stat. § 609.72, subd. 1. Rather, it suffices if the perpetrator has "reasonable grounds to know" that his or her conduct "will tend to" do these things. *Id.*

Here, Troxell's disorderly conduct impeded Springer's effort to arrest her and was witnessed by and may have upset other motorists. However, the jury acquitted Troxell of the charge of assaulting Springer. The real victim of the disorderly conduct was public order and society more generally.

Because the two offenses were a result of the same incident and both essentially offend public order, we conclude that there are not multiple victims of Troxell's conduct, that the multiple-victim exception to Minn. Stat. § 609.035 does not apply, and that the district court clearly erred in sentencing her for both offenses. We reverse Troxell's sentences and remand for the district court to resentence her on only one of the misdemeanor convictions.

V.

The next issue is whether this court should strike Troxell's pro se supplemental brief. The state filed a motion to strike this brief on the grounds that it fails to address

any of the arguments presented on appeal. But pro se supplemental briefs are intended to allow a pro se appellant an opportunity to present arguments not covered by appellate counsel. *See generally Case v. State*, 364 N.W.2d 797, 800 (Minn. 1985). And this court may choose to disregard some defects in a pro se brief. *See Thorp Loan & Thrift Co. v. Morse*, 451 N.W.2d 361, 363 (Minn. App. 1990), *review denied* (Minn. Apr. 13, 1990). Accordingly, we deny respondent's motion to strike.

VI.

The final issue is whether Troxell's pro se supplemental brief has any merit. In analyzing this issue, the arguments Troxell makes in this brief can be grouped in several categories.

A. Non-Record Based Claims

The first category of arguments hinge upon evidence that is not in the record. A pro se supplemental brief is limited to discussing evidence that is presented by the record on appeal. *See* Minn. R. Civ. App. P. 110.01 (stating that the record on appeal consists of papers filed in the district court, the exhibits, and a transcript of the proceeding). Everything in the addendum of the pro se brief is outside the record on appeal except for pages 3-5 and 16-18 of the addendum of the pro se brief. Troxell's arguments in paragraphs numbered 7, 11, 19, and 21-25 in her brief are based on materials not in the record. We do not consider these arguments.

B. Sufficiency of Evidence

Another category of Troxell's pro se arguments challenge the respondent's version of the facts, which includes challenging the credibility of Springer. Without expressly stating so, Troxell is in essence challenging the sufficiency of the evidence.

In considering a claim of insufficient evidence, an appellate court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the 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). The reviewing court must assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The reviewing 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 that the defendant was guilty of the charged offenses. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

The testimony of both Springer and another motorist, who was an eyewitness, support the conclusion that Troxell refused to comply with Springer's command to exit the vehicle and kicked and flailed at Springer as Springer tried to remove Troxell from her vehicle. A person would have reasonable grounds to know that fighting with an officer in this manner would tend to "alarm . . . or disturb others or provoke . . . [a] breach of the peace." Minn. Stat. § 609.72. The direct evidence presented the jury with the issue of credibility. In convicting, the jury apparently believed the testimony of Springer and the other motorist and disbelieved Troxell. Because the jury could

reasonably believe Springer and the other motorist and conclude that Troxell was guilty of disorderly conduct, we affirm that conviction.

Turning to the obstructing-legal-process conviction, we observe that it is undisputed that Springer was engaged in the performance of official duties: she was executing a traffic stop and could validly order Troxell out of the car during that stop. *See State v. Richmond*, 602 N.W.2d 647, 651 (Minn. App. 1999) ("Once an officer stops a vehicle, the officer may, for his safety, order the vehicle's occupants to exit the vehicle."), *review denied* (Minn. Jan. 18, 2000). Testimony that Troxell kicked and flailed at Springer is an adequate basis for finding that Troxell obstructed, resisted, or interfered with Springer's performance of official duties. Minn. Stat. § 609.50. Because the jury could reasonably conclude that Troxell was guilty of obstructing legal process, we affirm that conviction as well.

C. Stop/Arrest

In the next category of arguments, Troxell challenges the validity of her stop and arrest. Issues not presented to the district court are waived on appeal. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (holding that generally, an appellate court will not consider matters not argued to and considered by the district court). Moreover, Minn. R. Crim. P. 10.01, subd. 2, provides that arguments contesting a seizure's validity that are not made by motion before trial are waived. Troxell did not raise these issues before the district court or argue these matters prior to trial. Accordingly, we determine that the stop and arrest matters were waived and cannot be raised on appeal.

D. Counsel

Next, Troxell challenges the fact that several different attorneys handled the state's case at various stages below. But Troxell fails to show why this prejudiced her or amounted to error. We conclude that this argument has no merit and do not further consider it.

E. Mistrial

Finally, Troxell challenges the district court's denial of her motion for mistrial. The denial of a motion for a mistrial is reviewed for an abuse of discretion. *State v. Jorgensen*, 660 N.W.2d 127, 133 (Minn. 2003).

The basis for Troxell's mistrial claim is testimony of Danielle Richard, a law enforcement officer who worked at the Ramsey County jail. Richard testified for the state on rebuttal to challenge Troxell's claim that Troxell was cooperative. Richard testified that Troxell was uncooperative at points during the booking process. She also testified that when Troxell was changing into a jail uniform, Troxell engaged in dramatic and offensive conduct and described the conduct in detail.

Troxell bases her motion for mistrial on Richard's testimony about the offensive conduct, arguing that this testimony was so dramatic that it prejudiced Troxell by sullying her character. Troxell adds that the presentation of this testimony constituted prosecutorial misconduct because the prosecutor failed to disclose this information to Troxell's counsel as required by Minn. R. Crim. P. 9.03. Although the district court denied the motion, the court allowed Troxell to be recalled as a witness to address Richard's allegations. Troxell denied them.

Although Richard's testimony was unusual, the district court was in the best position to evaluate any prejudice from this testimony in light of all the other evidence and to observe the impact of this testimony on the jury. Moreover, the district court allowed Troxell to testify again, and she denied Richard's allegations. Under these circumstances, we conclude that it was not an abuse of discretion for the district court to determine that Richard's testimony did not deprive Troxell of a fair trial, and we affirm the district court's denial of Troxell's motion for mistrial.

Affirmed in part, reversed in part, and remanded; motion denied.

Dated: