STATE OF MINNESOTA
IN COURT OF APPEALS
A10-955

State of Minnesota,
Respondent,

vs.

Jerome Alan Nelson,
Appellant.

Filed June 20, 2011
Reversed
Stauber, Judge

Lake County District Court
File No. 38CR08861

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

Laura M. Auron, Lake County Attorney, Two Harbors, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, St. Paul, Minnesota; and

Samuel L. Walling, Brad P. Engdahl, Special Assistant Public Defenders, Minneapolis, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Ross, Judge; and Stauber, Judge.

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

STAUBER, Judge

On appeal from his conviction of obstruction of legal process with force in violation of Minn. Stat. § 609.50, subds. 1(2), 2(2) (2008) (gross misdemeanor), appellant

argues that (1) there is insufficient evidence to support his conviction and (2) the prosecutor committed plain error during closing argument by misstating the evidence. Because we conclude that the record does not support a finding that appellant intentionally obstructed, resisted, or interfered with a peace officer and employed force, violence, or the threat thereof, we reverse.

FACTS

A call was made to the Two Harbors Police Department on the evening of December 4, 2008, alleging that appellant Jerome Alan Nelson followed R.B.'s vehicle, pulled in front of R.B.'s vehicle, and repeatedly applied his brakes, ultimately stopping in the middle of the road in an apparent attempt to force a confrontation. Appellant was prohibited by an active harassment restraining order from having any contact with R.B.

Officers Michael Aho and Carl Eastvold of the Two Harbors Police Department responded to R.B.'s call and went to appellant's residence at approximately 11 p.m. that evening. Both officers later testified at appellant's jury trial that they heard a dog barking when they arrived at appellant's door. Neither officer saw the dog, because appellant had put the dog away in a bedroom before he answered the door. However, both officers later testified that appellant, when they asked if the dog was dangerous, made the comment that the dog would "rip [them] a new a—hole." Officer Eastvold testified that appellant also told them that the dog was "gentle."

The officers questioned appellant inside his home about the alleged contact with R.B., but appellant denied having any contact with R.B. and offered witnesses who would state that he had been at home when the alleged harassment occurred. The complaint

alleged that appellant became increasingly "belligerent" as the officers questioned him. When the officers informed appellant that he was being placed under arrest, appellant slammed his fist onto the kitchen counter, breaking a glass and cutting himself in the process.

There is some dispute as to what occurred next. Both officers testified that after breaking the glass, appellant ran into the dining/living room area of the home, at which point Officer Eastvold fired a taser at him and administered an electric shock. Officer Eastvold stated that he "tased" appellant because he did not know whether appellant may have been "going for a gun," "going to let the dog on us," or simply "trying to escape." Officer Aho testified that they "didn't know what [appellant's] intentions were at that point," but that appellant was running towards "the bedroom area" where they could hear the dog barking.

After receiving the taser shock, appellant fell to the floor. When he attempted to pull the taser leads out of his body rather than put his hands behind his back as ordered by the officers, Officer Eastvold tased appellant a second time. The officers were then able to handcuff appellant. After appellant was handcuffed and while he was waiting to be taken to the police station, he told the officers, "next time you guys come over, it is going to be a shootout."

Appellant was charged in Lake County District Court with one count of violation of a harassment restraining order and one count of obstruction of legal process by force. A jury returned a verdict of not guilty of the predicate offense of violation of a harassment restraining order, but guilty of obstruction of legal process with force. The

district court sentenced appellant to one year in jail with 60 days executed, but stayed imposition of the sentence pending appeal and placed appellant on probation. This appeal followed.

D E C I S I O N

I.

Appellant argues that there is insufficient evidence to sustain his conviction. 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, was sufficient to permit the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We 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). This is especially true when resolution of the matter depends mainly on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). An appellate 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 offense. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

Minn. Stat. § 609.50 provides that whoever intentionally "obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties" commits obstruction of legal process. Minn. Stat. § 609.50, subd. 1(2). Such acts constitute a gross misdemeanor "if the act was accompanied by force or violence or the

threat thereof." *Id.*, subd. 2(2). Appellant argues that the record contains insufficient evidence to establish either of these elements. We agree.

The Minnesota Supreme Court has held that Minn. Stat. § 609.50 is "directed solely at physical acts." *State v. Krawsky*, 426 N.W.2d 875, 877 (Minn. 1988). In *Krawsky*, the court rejected an overbreadth challenge to the statute, and in doing so stated that Minn. Stat. § 609.50 is "directed at a particular kind of physical act, namely, physically obstructing or interfering with an officer." *Id*. (quotation omitted). Although the court considered the statute to only prohibit physical acts, the court acknowledged that the statute could be used in limited circumstances to punish "fighting words" or those words that "by themselves have the effect of physically obstructing or interfering with a police officer." *Id.* In *State v. Tomlin*, the supreme court held that a defendant's lies to police officers did not constitute obstruction of legal process because the defendant had not physically obstructed or interfered with the officers. 622 N.W.2d 546, 549 (Minn. 2001).

This court also addressed the obstruction of legal process statute in *State v. Morin*, and held that the statute only includes conduct that is "directed at" police officers that obstructs, resists, or interferes with the performance of their official duties, and thus does not include fleeing a police officer. 736 N.W.2d 691, 697–98 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007). This court stated that "the statute cannot be read so broadly as to include any act that merely reduces the ability of a police officer to successfully apprehend a suspect." *Id.* at 697.

Viewing the evidence in the light most favorable to conviction, we conclude that appellant's actions do not fall within the scope of the statute. Appellant's act of slamming his fist on the counter is not conduct that obstructed or interfered with the officers. It was not directed at the officers, and nothing in the record indicates that this conduct interfered with the officers' ability to carry out their duties. Further, appellant's comment to the officers that there would be a "shootout" the next time they came to his home is not speech that is punishable by the statute. Appellant was already handcuffed and in the officers' custody when he made the statement, and his words did not "have the effect of physically obstructing or interfering with a police officer in the performance of his duties." *See Krawsky*, 426 N.W.2d at 877. Further, the statement cannot be considered "fighting words," because it alluded to a shootout at some point in the future and was not likely to provoke an immediate reaction. *See Chaplinsky v. New Hampshire*, 315 U.S. 568, 572, 62 S. Ct. 766, 769 (1942) (defining "fighting words" as "those which by their very utterance inflict injury or tend to incite an immediate breach of the peace").

Appellant's other actions also do not amount to conduct that is punishable under the statute. His conduct immediately following the first electrical shock—when he attempted to pull the taser leads out of his body rather than comply with the officers' orders to place his hands behind his back—was not conduct directed at the officers. *See Morin*, 736 N.W.2d at 698 (holding that Minn. Stat. § 609.50 "applies only to conduct directed at police officers engaged in the performance of official duties"). The conduct was solely a reaction to the painful electric shock appellant had just experienced.

Further, appellant's act of running through the living room does not constitute obstruction of legal process. *See id.* at 697–98 (holding that fleeing a police officer, although a physical act, is not conduct directed at police officers that obstructs, resists, or interferes, within the meaning of the statute). It is this conduct that the state primarily relies on, arguing that appellant obstructed, resisted, or interfered because he was running towards the bedroom where his dog was located. We disagree. Although the complaint alleged that appellant "reached for the door where he had placed his dog" just prior to being tased, the testimony at trial did not support this allegation. The officers' testimony indicated that appellant was tased while he was still in the living room. Neither officer testified about appellant's proximity to the bedroom. The only evidence that appellant was attempting to reach the bedroom in order let his dog out was the officers' speculation as to what appellant's intent may have been. Officer Aho testified that they "didn't know what his intentions were at that point," and Officer Eastvold stated that they were unsure whether appellant may have been heading for the bedroom or was simply "trying to escape." On this record, we cannot conclude that appellant's actions constitute obstruction of legal process.

We also conclude that the evidence does not support appellant's conviction because his actions were not accompanied by force, violence, or threat. The statute does not define the phrase "force or violence or the threat thereof." Minn Stat. § 609.50, subd. 2(2). Accordingly, the supreme court has stated these words "are to be construed according to their common and approved usage." *State v. Engholm*, 290 N.W.2d 780, 784 (Minn. 1980); *see also Otis Lodge, Inc. v. Commissioner of Taxation*, 295 Minn. 80,

83, 206 N.W.2d 3, 6 (1972). The absence of any statutory definition for these words means that "the words have such a distinct and common usage that they require no further definition." *Engholm*, 290 N.W.2d at 785.

Other cases in which Minnesota courts have upheld gross-misdemeanor obstruction of legal process convictions had facts markedly different than the facts in this case. For instance, in *Engholm*, the supreme court held that two defendants acted with the necessary force or violence or threat thereof when one of the defendants wrestled with a police officer to allow the other defendant to jerk away and escape, and one of the defendants threatened to kill the officer. 290 N.W.2d at 784. In a case decided by this court, *State v. Diedrich*, the defendant pushed a police officer to allow an acquaintance to escape from the back of the officer's squad car. 410 N.W.2d 20, 21 (Minn. App. 1987). The defendant then ran away while the officer struggled to apprehend the acquaintance. *Id.*

After a careful review of the record, we conclude that appellant's flight from the officers did not constitute force, violence, or threat. The state attempts to characterize appellant's actions as violent by stating that appellant "ran from police toward his barking, vicious dog." The evidence simply does not support this version of the events. Neither officer provided any description of the dog; both officers conceded on cross examination that they never saw the dog because appellant had already put the dog away before they entered the home. It is undisputed that appellant did not lay a hand on the officers or threaten to do so. There is no evidence of force or violence, and we cannot

agree that appellant's perceived movement towards the bedroom amounts to a threat of force or violence sufficient to constitute gross misdemeanor obstruction of legal process.

Because we reverse appellant's conviction for insufficient evidence, we need not address his additional argument that the prosecutor committed plain error by materially misstating the evidence during closing arguments.

Reversed.