

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-12-158
	:	
- vs -	:	<u>OPINION</u>
	:	6/7/2010
	:	
JUSTIN K. DEVILLERE,	:	
	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 09CR25865

Rachel A. Hutzal, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

A. Aaron Aldridge, 1001 West Main Street, Suite F, Lebanon, Ohio 45036, for defendant-appellant

BRESSLER, P.J.

{¶1} Defendant-appellant, Justin Devillere, appeals his conviction in the Warren County Court of Common Pleas for one count of obstructing official business. We affirm the conviction.

{¶2} Officer Eric Abrams was patrolling the Community Park area of Springboro, Ohio on the morning of May 25, 2009. As part of his normal patrol, Abrams was wearing his police-issued uniform, had his police badge and firearm, and was driving his marked police cruiser. As Abrams drove west on a street near the

Community Park, he saw Devillere walking on the side of the road. According to his trial testimony, Abrams was familiar with Devillere because he was a known criminal in the area and Abrams had arrested him multiple times in the past. Abrams contacted police dispatch to see if there were any outstanding warrants for Devillere, and found out in the process that Warren County held a warrant for Devillere's arrest.

{¶3} By the time Abrams was informed of the outstanding warrant, Devillere had walked into Community Park, and was sitting on a picnic table when Abrams approached him. According to Abrams' testimony, he walked to within five feet of Devillere and announced that he had a warrant for Devillere's arrest. Upon hearing Abrams' announcement, Devillere stood up from the picnic table, said "bullshit," and fled on foot. Abrams gave chase and continually stated that he was executing a warrant, commanded Devillere to stop, and informed him that he was under arrest.

{¶4} After Abrams unsuccessfully tried to taze Devillere, he caught up to him and took Devillere to the ground by pushing him in a forward motion and tripping him. The two struggled on the ground, and according to Abrams, Devillere swung his fists at him, but did not connect. As the two men continued to struggle, an additional officer came upon the scene and helped Abrams detain Devillere. Abrams was treated for several cuts and scrapes on his arm, wrist, and knees while Devillere received medical treatment for a large gash on his head that was noticeably bleeding.

{¶5} Devillere was arrested and later indicted on single counts of assault on a peace officer and obstructing official business. During Devillere's trial, he testified on his own behalf and explained to the jury that he was exercising in the park when Abrams began chasing him and tackled him to the ground. Devillere testified that soon after he and Abrams fell to the ground, Abrams hit him on the head with the butt of the tazer gun and he was knocked unconscious as a result. Devillere also adamantly denied trying to

hit Abrams or assault him in any way.

{¶16} The jury returned a not-guilty verdict as to the assault charge, but found Devillere guilty of obstructing official business, and the trial court sentenced Devillere to nine months in prison. Devillere now appeals his conviction and sentence raising the following assignments of error.

{¶17} Assignment of Error No. 1:

{¶18} "THE APPELLANT DID NOT RECEIVE A FAIR TRIAL DUE TO PREJUDICIAL ERROR COMMITTED BY THE TRIAL COURT."

{¶19} In his first assignment of error, Devillere asserts that the trial court erred by making a comment in front of the jury regarding the relevancy of an arrest warrant on the morning Abrams arrested Devillere. This argument lacks merit.

{¶110} According to R.C. 2921.31(A), "no person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties."

{¶111} Essentially, Devillere argues that the state failed to prove that Abrams was on official business at the time of his arrest. Instead, Devillere asserts that dispatch incorrectly told Abrams that there was an active warrant for Devillere's arrest and without a proper warrant, Abrams was not on official duty at the time he tried to arrest Devillere. However, Devillere failed to demonstrate to either the trial court or this court that the warrant was invalid.

{¶112} As discussed in more detail under the second assignment of error, Devillere claims that the warrant was invalid because it was issued at a time when he was incarcerated. However, this assertion does not prove that the warrant was invalid, and nothing in the record indicates that Abrams did not act reasonably by relying on

dispatch's indication that a warrant existed for Devillere's arrest. See *Arizona v. Evans* (1995), 514 U.S. 1, 115 S.Ct. 1185 (upholding validity of police activity where officer made arrest after relying on inaccurate computer records indicating the existence of an outstanding arrest warrant).

{¶13} During cross-examination, Devillere began to question Abrams concerning the existence of a warrant and Abrams' testimony regarding contacting dispatch and finding out there was a warrant for Devillere's arrest. The questions and Abrams' answers clearly established that Abrams did not have a physical paper copy of the warrant with him at the time he approached Devillere and instead, was acting on dispatch's confirmation that Warren County held an active warrant for Devillere's arrest. After establishing these facts, Devillere changed subjects and began questioning Abrams about the supposed assault.

{¶14} During the state's re-direct of Abrams, it broached the subject of the warrant and Abrams explained the process of arresting a person without a warrant. "The process is a warrant is issued for a person's arrest. As a police officer we have to contact whichever agency issued or court issued that warrant for arrest and we have to do what we call a confirmation with the – we actually have to have somebody, like in this particular case I had a local dispatch physically contact Warren County Sheriff's Office. They then looked and they make physical contact, they say, yes, we have a warrant."

{¶15} After Abrams explained this process, Devillere objected, claiming that Abrams' testimony contained hearsay. In response, the trial court stated, "It's really irrelevant whether he had a warrant or not. However, since you did talk so much about the warrant, I'm going to give him an opportunity to explain the process when they arrest under a warrant." At that point, the trial court overruled Devillere's objection and defense counsel requested a side-bar, at which the following exchange occurred:

{¶16} "[Defense counsel] *** We believe in order for this charge to be an obstruction of official business, they have to be on some official business. And if there is a warrant, they never were provided a warrant. So we will object to the Court's charge for the jury, it's irrelevant.

{¶17} "[Trial court] I note your objection. I don't believe that the law requires a warrant for an officer to have that discussion as he described."

{¶18} After the state rested, Devillere again noted his objection to the court's comment that the warrant was irrelevant. In response, the court stated, "well, my comment was made specifically as to whether or not it's an element that the jury has to consider. I thought I was talking about whether he had a warrant in his hand or not, but I understand your concern. But they really don't have to prove there was a warrant ***." After defense counsel asked, "how does he prove he's on official business?," the trial court clarified its comments and noted that its statement was specific to the fact that the state does not need to have a physical copy of an arrest warrant when executing it. The trial court went on to differentiate that comment from the state's burden to prove that Abrams was on official business at the time of the attempted arrest.

{¶19} The trial court did not err in commenting that the police are not required to have a physical warrant when arresting someone. Instead, and according to Crim.R. 4(D)(3), "warrants shall be executed by the arrest of the defendant. The officer need not have the warrant in the officer's possession at the time of the arrest." Although Devillere asserts that the trial court's comment in front of the jury somehow negated the state's need to prove that Abrams was on official business, the comment that a warrant was irrelevant complies with the criminal rule and was not a misstatement of law in any manner.

{¶20} The trial court was also correct in explaining that having a warrant is not an

element of the offense, and instead that the state need only prove that Abrams was on official business at the time of the arrest. In reviewing the requirements set forth in R.C. 2921.31(A), the state was required to prove five elements in order to procure a conviction for obstructing official business: "(1) an act by the defendant; (2) done with the purpose to prevent, obstruct, or delay a public official; (3) that actually hampers or impedes a public official; (5) [sic] while the official is acting in the performance of a lawful duty; and (5) the defendant does so act without a privilege to do so." *State v. Dice*, Marion App. No. 9-04-41, 2005-Ohio-2505, ¶19.

{¶21} The only element Devillere challenges is specific to the state's burden to prove that Abrams was on official business. Devillere now argues that the trial court's statement somehow made the jury believe that the state was not required to prove the official business element. However, once the court's statement is understood in its context, it is apparent that it did not cause the jury to infer that the state need not prove that Abrams was on official business at the time of the incident. Instead, the jury found that the state fulfilled its burden on the challenged element after the state offered substantial evidence at trial that demonstrated that Abrams was in fact on official business when he tried to arrest Devillere.

{¶22} Initially, we note that Abrams was wearing his police uniform, had police-issued weapons on his person, and was on duty at the time of the incident. Devillere also admitted during his testimony that he knew Abrams was a police officer and that he saw Abrams in his police cruiser both on the street before he entered the park and in the park before he began to "exercise." Most significantly, Abrams specifically testified that executing a warrant is part of his official duties as a police officer. When the state asked Abrams if "an outstanding warrant specifically commands any law enforcement officer to execute a warrant," he responded, "correct." When the state specifically asked Abrams

if serving a warrant was "one of [his] official duties as a police officer," Abrams responded, "it is."

{¶23} The jury heard Abrams' testimony regarding the steps he took to inquire into the possible existence of a warrant, and that dispatch confirmed that a valid warrant existed before he tried to detain Devillere. Abrams further testified that had dispatch told him there was no warrant for Devillere's arrest, he would have kept driving and had no further contact with Devillere.

{¶24} Abrams' testimony therefore demonstrates that he was on official business at the time of the incident in that he was trying to execute the arrest warrant. Having found that the trial court's statement was legally sound and that the state fulfilled its burden to prove the official business element of the offense, Devillere's first assignment of error is overruled.

{¶25} Assignment of Error No. 2:

{¶26} "APPELLANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL."

{¶27} In his second assignment of error, Devillere asserts that he was denied effective assistance of counsel because defense counsel failed to introduce evidence to demonstrate that the state did not have a valid warrant against him. There is no merit to this argument.

{¶28} The Sixth Amendment pronounces an accused's right to effective assistance of counsel. However, and warning against the temptation to view counsel's actions in hindsight, the United States Supreme Court stated that judicial scrutiny of an ineffective assistance claim must be "highly deferential***." *Strickland v. Washington* (1984), 466 U.S. 668, 689, 104 S.Ct. 2052.

{¶29} Also within *Strickland*, the Supreme Court established a two-part test that

requires an appellant to establish that first, "his trial counsel's performance was deficient; and second, that the deficient performance prejudiced the defense to the point of depriving the appellant of a fair trial." *State v. Myers*, Fayette App. No. CA2005-12-035, 2007-Ohio-915, ¶ 33, citing *Strickland*.

{¶30} Regarding the first prong, an appellant must show that his counsel's representation "fell below an objective standard of reasonableness." *Strickland* at 688. The second prong requires the appellant to show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. Because the appellant must prove both prongs, a reviewing court need not address the deficiency issue if appellant was not sufficiently prejudiced by counsel's performance. *Id.* at 697.

{¶31} As referenced in Devillere's first assignment of error, he now asserts that the warrant Abrams relied on to arrest him was invalid because he was in jail at the time the warrant was issued. Devillere asserts that had defense counsel called the Clerk of Courts, the jury would have heard testimony that he was in jail on the date the warrant was issued. However, Devillere fails to explain how the warrant is per se defective simply because it was issued while he was incarcerated. We will not speculate or otherwise hypothesize when Devillere has failed to explain why the warrant was defective other than stating he was in jail on the date it was issued. Regardless, even if defense counsel had called witnesses or presented evidence to discredit the warrant, there is no indication that the results of Devillere's trial would have been different.

{¶32} In addition to *Arizona v. Evans*, 514 U.S. 1, which validated a search after an officer reasonably relied on information in a computer system indicating the existence of an outstanding arrest warrant even though the warrant was later found to be invalid, Ohio courts have similarly upheld police activity when the officer reasonably relied on

information without having seen the paper arrest warrant. In *State v. Bishop* (Mar. 20, 1997), Cuyahoga App. No. 70177, a Cleveland housing authority police officer received information from an FBI agent that a valid arrest warrant existed against Bishop. Although the officer did not see the actual warrant, he reasonably relied on the "information available at the time of arrest, which included the computer generated data showing the existence of the warrant." *Id.* at *2. Because of the officer's reasonable reliance, the court upheld the arrest and subsequent search.

{¶33} Even if Devillere's counsel had called witnesses to prove that the warrant was somehow invalid, the results of the trial would not have been different because Abrams reasonably relied on the information from dispatch that there was a valid arrest warrant for Devillere. Further, and as the state points out in its brief, calling a witness to testify regarding the warrant would only serve to verify that a valid warrant existed at one time and bolster Abrams' reliance on the information he received from dispatch.

{¶34} After reviewing the record, we find that defense counsel's performance was neither deficient nor prejudiced Devillere in any way. Having found that Devillere received effective assistance of counsel, his second assignment of error is overruled.

{¶35} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.