

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
GALLIA COUNTY

STATE OF OHIO,	:	Case No. 16CA4
Plaintiff-Appellee,	:	
v.	:	<u>DECISION AND</u>
TONI F. NOVAK,	:	<u>JUDGMENT ENTRY</u>
Defendant-Appellant.	:	RELEASED: 1/25/17

APPEARANCES:

Thomas E. Saunders, Gallipolis, Ohio, for appellant.

Adam R. Salisbury, Gallipolis City Solicitor, Gallipolis, Ohio, for appellee.

Harsha, J.

{¶1} Following a bench trial the Gallipolis Municipal Court convicted Toni F. Novak of obstructing official business. Novak claims that the trial court erred in finding her guilty because the evidence was insufficient to support her conviction. Initially, she contends that the mere making of a false, unsworn statement to a police officer cannot be the basis for a conviction for obstructing official business. The Supreme Court of Ohio has expressly rejected this contention by holding that the making of an unsworn false oral statement to a public official with the purpose to mislead, hamper, or impede an investigation of a crime constitutes the crime of obstructing official business. The state introduced evidence that Novak lied to a police officer by telling him that she had not seen a friend, who had an outstanding arrest warrant and was present in Novak's residence.

{¶2} Next Novak asserts that there was insufficient evidence to establish that her false statement actually hampered or impeded the police officers in their attempt to

arrest her friend because the police immediately apprehended the friend after Novak made the statement. This assertion is meritless because there is no finite, definitive, or particular time that must elapse to support a conviction for obstructing official business; the record must demonstrate only that the defendant's conduct hampered or impeded the public official's ability to perform his or her official duties. A police officer testified that Novak's false statement delayed, impeded, or obstructed their apprehension of her friend and that if Novak had responded truthfully to the officer's question, they would have apprehended the friend more quickly.

{¶3} Finally, Novak argues that there was insufficient evidence to support her conviction because her actions were privileged, i.e., she could rightfully refuse to consent to a warrantless entry or search by the police of her residence. We reject her argument because the police never entered or searched her residence. Privilege is an affirmative defense, for which she bore the burden of proof. She cites no authority holding that providing false information to police is privileged. We overrule her first assignment of error.

{¶4} Novak also contends that her trial counsel was ineffective by failing to file a motion to suppress or a motion to dismiss based on her arguments in her first assignment of error. Because these motions would have been meritless based upon our analysis of her first assignment of error, we overrule her second assignment of error and affirm her conviction.

I. FACTS

{¶5} Gallipolis Police Lieutenant Matt Champlin filed a complaint charging Toni F. Novak with obstructing official business in violation of Gallipolis Codified Ordinances

525.07(a), a misdemeanor of the second degree. Novak entered a plea of not guilty to the charge and received appointed counsel. The case proceeded to a bench trial, which produced the following evidence.

{¶6} Lt. Champlin testified that he and Patrolman Adkins were on a public sidewalk in Gallipolis on the evening of October 29, 2015, when they observed Sheri Edge and Novak in the lighted living room of Novak's residence. Lt. Champlin confirmed that there was an outstanding active warrant for Edge's arrest and then proceeded to the front porch and knocked on the door. Novak opened the front door, and Lt. Champlin, who was in uniform, identified himself as a police officer. Patrolman Adkins stayed at the sidewalk to visually observe Edge through Novak's living room window.

{¶7} According to Lt. Champlin when Novak opened the door, he asked her if she had seen Edge that evening, but Novak lied to him despite the fact the officers had just observed the two together in Novak's living room. Lt. Champlin testified that Novak's false answer delayed, impeded, or obstructed his apprehension of Edge. Lt. Champlin testified over objection that Patrolman Adkins indicated that when Champlin knocked on the front door, Edge left the living room and went out of sight. She did not come to the front door until she saw the patrolman near the back of the residence; when she subsequently exited the house, she was arrested. Lt. Champlin specifically testified that they would have been able to apprehend Edge more quickly if Novak had told him the truth and let them into her house.

{¶8} Novak testified that the police could not see inside her home at night and that before she could answer Lt. Champlin's question about whether she had seen

Edge, Edge came through the front door and the police arrested her. Novak admitted at trial that Edge was in her residence on that night and had been staying with her about a month when she was arrested.

{¶9} At the conclusion of the trial the court found Novak guilty of obstructing official business. The trial court sentenced her to three years of intensive probation and fined her \$50 plus court costs.

II. ASSIGNMENTS OF ERROR

{¶10} Novak assigns the following errors for our review:

1. THE COURT ERRED IN FINDING MS. NOVAK GUILTY BECAUSE THE EVIDENCE PRESENTED BY THE STATE OF OHIO WAS INSUFFICIENT FOR A FINDING OF GUILTY.
2. TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF MS. NOVAK'S RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND SECTIONS 10 AND 16, ARTICLE I OF THE OHIO CONSTITUTION BY NOT FILING A MOTION TO SUPPRESS AND/OR MOTION TO DISMISS.

III. LAW AND ANALYSIS

A. Sufficiency of the Evidence

{¶11} In her first assignment of error Novak asserts that the trial court erred in convicting her of obstructing official business because the state's evidence was insufficient to support her conviction.

{¶12} "When a court reviews a record for sufficiency, '[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.' " *State v. Maxwell*, 139 Ohio St.3d 12, 2014-Ohio-1019, 9 N.E.3d 930, ¶ 146, quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991),

paragraph two of the syllabus; *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

{¶13} In making this ruling a court does not weigh the evidence but simply determines whether the evidence, if believed, is adequate to support a conviction; sufficiency does not test the rational persuasiveness of the state's case, but merely its legal adequacy. *State v. Koon*, 4th Dist. Hocking No. 15CA17, 2016-Ohio-416, ¶ 17. The weight and credibility of the evidence are left to be determined by the trier of fact, which is free to believe all, part, or none of the testimony of any witness who appears before it. See *State v. Reyes-Rosales*, 4th Dist. Adams No. 15CA1010, 2016-Ohio-3328, ¶ 17, citing *State v. Kirkland*, 140 Ohio St.3d 73, 2014-Ohio-1966, 15 N.E.3d 818, at ¶ 132, and *State v. West*, 4th Dist. Scioto No. 12CA3507, 2014-Ohio-1941, ¶ 23.

{¶14} The trial court convicted Novak of obstructing official business in violation of Gallipolis Codified Ordinances 525.07(a). This ordinance (which is patterned after and identically worded as the obstructing official business offense in R.C. 2921.31(A)) provides, “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.” This offense has five essential elements: (1) an act by the defendant; (2) done with purpose to prevent, obstruct, or delay a public official, (3) that actually hampers or impedes a public official, (4) while the official is acting in the performance of a lawful duty, and (5) the defendant so acts without privilege. See *Columbus v. Montgomery*, 10th Dist. Franklin No. 09AP-537,

2011-Ohio-1332, ¶ 89, citing *State v. Kates*, 169 Ohio App.3d 766, 2006–Ohio–6779, 865 N.E.2d 66, ¶ 21 (10th Dist.).

{¶15} Novak claims that the evidence was insufficient to support her conviction because she did not do any “act that hampers or impedes a public official in the performance of the public official’s duties.” Initially she argues that the mere making of an unsworn false oral statement to a police officer is insufficient to support a conviction for obstructing official business. She cites *State v. Stephens*, 57 Ohio App.3d 229, 230, 387 N.E.2d 252 (1st Dist.1978), in support of this proposition, which in turn relied on *Columbus v. Fisher*, 53 Ohio St.2d 25, 372 N.E.2d 581 (1978). The Supreme Court of Ohio overruled *Fisher* in *State v. Lazzaro*, 76 Ohio St.3d 261, 667 N.E.2d 384 (1996), syllabus, by holding that “[t]he making of an unsworn false oral statement to a public official with the purpose to mislead, hamper or impede the investigation of a crime is punishable conduct within the meaning of * * * R.C. 2921.31(A).” See also *State v. Wilson*, 101 Misc.2d 43, 46, 721 N.E.2d 421 (M.C.1999) (recognizing that *Stephens* was overruled by *Lazzaro*). Sufficient evidence supports a defendant’s conviction for obstructing official business when it is based on a lie to police officers. See *State v. Givens*, 2d Dist. Montgomery No. 26782, 2016-Ohio-4978, ¶ 35. Based on *Lazzaro*, Novak’s first argument is meritless.

{¶16} Novak next contends that the state presented no evidence to prove that she hampered or impeded the police in arresting Edge because Edge was immediately apprehended after Novak falsely represented to Lt. Champlin that she had not seen Edge. We reject his contention because there is no finite, definitive, or particular time that must elapse to support a conviction for obstructing official business; the record

must demonstrate only that the defendant's conduct hampered or impeded the public official's ability to perform his or her official duties. See *State v. Ertel*, 12th Dist. Warren No. CA2015-12-109, 2016-Ohio-2682, ¶ 10; *State v. Shoemaker*, 1st Dist. Hamilton No. C-140724, 2015-Ohio-4645, ¶ 15; *State v. McLaughlin*, 2d Dist. Montgomery No. 26521, 2015-Ohio-4611, ¶ 15. Lt. Champlin testified that Novak's false statement about not seeing Edge delayed, impeded, or obstructed their apprehension of Edge, i.e. they would have arrested her more quickly if Novak had not made the false statement. As the trier of fact the trial court was free to credit this testimony in concluding that Novak's false statement hampered or impeded the police in the performance of their official duties.

{¶17} Novak also contends that there was insufficient evidence to support her conviction because she was unaware that the officer was conducting official business when he asked her if she had seen Edge that evening. The mens rea element of the offense requires that it be committed with the *purpose* to prevent, obstruct or delay the performance by a public official of any authorized act within the public official's official capacity. See, e.g., *State v. Carter*, 11th Dist. Paulding No. 11-10-08, 2011-Ohio-522, ¶ 21. This purpose can be established by circumstantial evidence. See *State v. Bartimus*, 7th Dist. Belmont No. 02 BA 23, 2003-Ohio-808, ¶ 22; see also *State v. Jackson*, 1st Dist. Hamilton No. C-140178, 2014-Ohio-5008, ¶ 15 ("Purpose is generally shown by circumstantial evidence"). Lt. Champlin appeared at Novak's residence in uniform at night, identified himself as a police officer, and asked her a question concerning the whereabouts of Edge. This provided sufficient circumstantial evidence to establish Novak knew the officer was acting within his official capacity when she lied

to him. Thus, there is evidence that she purposefully obstructed or delayed with the officer's official duties.

{¶18} Finally, Novak contends that there was insufficient evidence because her actions were privileged. Although she argues that the state failed to present any evidence that her actions were done without privilege, the burden of proof is on the defendant to establish a privilege as an affirmative defense to the charge of obstructing official business. See *State v. Luke*, 4th Dist. Washington No. 09CA30, 2010-Ohio-4309, ¶ 16, citing *State v. Williams*, 8th Dist. Cuyahoga No. 83574, 2004-Ohio-4476, ¶ 38; *Columbus*, 2011-Ohio-1332, at ¶ 70, quoting *State v. Stevens*, 5th Dist. Morgan No. 07-CA-0004, 2008-Ohio-6027, ¶ 35 (“ ‘the absence of privilege is not an essential element of obstructing official business which the state must prove beyond a reasonable doubt’ ”).

{¶19} Novak claims that she was privileged to refuse to consent to a warrantless entry or search by the police of her residence. We reject her contention because the police never entered or searched her residence. And Novak cites no authority that providing a false statement to police is protected by any cognizable privilege.

{¶20} After viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime of obstructing official business proven beyond a reasonable doubt. Novak's conviction for obstructing official business was consequently supported by sufficient evidence. We overrule Novak's first assignment of error.

B. Ineffective Assistance of Counsel

{¶21} In her second assignment of error Novak asserts that her appointed trial attorney provided ineffective assistance of counsel.

{¶22} To prevail on a claim of ineffective assistance of counsel, a criminal defendant must establish (1) deficient performance by counsel, i.e., performance falling below an objective standard of reasonable representation, and (2) prejudice, i.e., a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *State v. Short*, 129 Ohio St.3d 360, 2011-Ohio-3641, 952 N.E.2d 1121, ¶ 113; *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674; *State v. Knauff*, 4th Dist. Adams No. 13CA976, 2014-Ohio-308, ¶ 23. The defendant has the burden of proof because in Ohio, a properly licensed attorney is presumed competent. *State v. Gondor*, 112 Ohio St.3d 377, 2006-Ohio-6679, 860 N.E.2d 77, ¶ 62. Failure to satisfy either part of the test is fatal to the claim. *Strickland* at 697; *State v. Bradley*, 42 Ohio St.3d 136, 143, 538 N.E.2d 373 (1989).

{¶23} Novak argues that her trial counsel was ineffective for failing to file a motion to suppress or move to dismiss the charge for the reasons she posited in her first assignment of error. We have already rejected these arguments in disposing of that assignment.

{¶24} Because a motion to suppress or to dismiss on these grounds would have been meritless, Novak's trial counsel was not deficient for failing to file them. See *State v. Gavin*, 4th Dist. Scioto No. 13CA3592, 2015-Ohio-2996, ¶ 46. "We must presume that trial counsel was effective if counsel 'could have reasonably decided that filing a suppression motion would be a futile act, even if there is some evidence to support a motion.' " *State v. Siggers*, 4th Dist. Ross No. 13CA3368, 2014-Ohio-506, ¶ 10, quoting

State v. Walters, 4th Dist. Scioto No. 12CA949, 2013-Ohio-772, ¶ 20. Nor can Novak establish any prejudice from failing to file motions on grounds that were meritless. We overrule her second assignment of error.

IV. CONCLUSION

{¶25} Novak has not established any error in the trial court's conviction. Having overruled her assignments of error, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Gallipolis Municipal Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

J. Abele & J. McFarland: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.