[Cite as *State v. Morris*, 2016-Ohio-8325.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103561

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DOUGLAS M. MORRIS

DEFENDANT-APPELLANT

JUDGMENT:
CONVICTION VACATED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-593535-A

BEFORE: McCormack, J., Keough, P.J., and E.A. Gallagher, J.

RELEASED AND JOURNALIZED: December 22, 2016

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TIM McCORMACK, J.:

{¶1} Defendant-appellant Douglas Morris was involved in an argument and then a physical fight with his daughter's boyfriend. He was subsequently charged not only with aggravated assault for the fight but also with obstructing official business for his behavior while being transported to the police station. The jury acquitted Morris of the primary charge of assault but found him guilty of obstructing official business.

{¶2} Our full and careful examination of the evidence as reflected by the trial testimony does not reflect that Morris, while certainly imprudently disrespectful and unaccommodating toward the officers, engaged in an affirmative act that satisfied the statutorily enumerated elements of the offense of obstructing official business. Morris's exasperation and angry state of mind and resultant uncooperative behavior no doubt rendered the police officers' performance of their duty much more arduous and unpleasant than if they were transporting a docile, polite person. The courts, however, have not interpreted the obstructing official business statute to criminalize uncouth, uncooperative conduct such as displayed by Morris.

{¶3} Our thorough review of the case law indicates rather that the courts have consistently applied the statute narrowly and held that a conviction of obstructing official business required an affirmative act, done with an intent to obstruct the public officials, which then did actually hamper or impede the performance of their duties. The charge of

obstructing official business against Morris is unwarranted, and his conviction is unsupported by sufficient evidence. Accordingly, we vacate Morris's conviction of the obstructing offense.

Substantive Facts and Procedural History

{¶4} Morris's daughter has two biological children with Robert Wade. Wade has not been present to help with the children, a five-year-old and a baby. As a result, Douglas Morris would go to his daughter's house every morning to pick up his grandchildren, take the five-year-old to school, and care for the baby while his daughter worked during the day. In the very early morning of February 18, 2015, Douglas Morris went to his daughter's house as usual to pick up his grandchildren. Morris went inside the house because he needed to use the bathroom. While inside the house, he caught sight of Wade sleeping in a bedroom. Morris was surprised by Wade's unexpected presence in the house and became upset because Wade took no responsibility for his own children. Morris woke Wade up to confront him about it. The confrontation escalated into a physical altercation. Wade got on top, getting the better of Morris, and attacked him, ultimately leading to Morris's stabbing Wade.

{¶5} From the incident, Morris was charged with five counts: two counts of aggravated assault, two counts of endangering children, and lastly with obstructing official business. At the jury trial, Wade and Morris gave very different accounts of what led to Morris stabbing Wade.

{¶6} According to Wade, Morris came inside the bedroom where Wade was sleeping and grabbed him by the shoulders. Wade reacted by hitting Morris in the face, which knocked off Morris's glasses. They then fought in the living room, and Wade got on top of Morris, holding his arms down. Morris yelled for Wade to get off him. At that point, Wade felt a sharp pain on his side, and later realized he had been stabbed. Wade was 26 years old, 280 pounds, and 6'2" in height.

{¶7} Morris testified that he stabbed Wade in self-defense. He testified that he yelled for Wade to wake up to take care of his own children. Wade would not get up. Infuriated with Wade for his irresponsibility, Morris started to leave the house, but was suddenly hit in the back of his head by Wade. Morris's glasses were knocked off, and he became disoriented. He was then pushed up against the window, and Wade was on top of him, punching him and choking him. To defend himself, Morris pulled out a knife from his pocket and stabbed Wade on his side. Wade continued to punch him even after he had been stabbed. Morris's daughter eventually helped get Wade off of Morris. Morris himself called the police immediately to report the incident.

{¶8} Morris testified that he was not in condition to fight Wade because of breathing difficulties and a back problem. He explained that he always carried a knife for his own safety, noting that people were robbed frequently in his inner-city Kinsman neighborhood. Morris admitted he was very angry with the responding police officers because the officers arrested him even though he was the one who had called and sought intervention from the police. Further, after the officers arrested him following the fight,

they threw him in the back seat of the police vehicle with no concern for his physical condition. He had a difficult time sitting up in the police vehicle because of his large size (300 pounds and 6'2" in height), the tight handcuffs, and the bruises from the altercation. When he arrived at the police station, he asked for help to get out of the vehicle. The officers eventually helped him exit the vehicle. Although the officers testified that Morris was intoxicated, Wade, who was in close physical contact with Morris, testified that Morris was not intoxicated.

{¶9} The trial court instructed the jury on self-defense regarding the assault charges. The jury acquitted Morris of all of the assault and endangering charges, but found him guilty of obstructing official business, a misdemeanor of the second degree. The trial court sentenced him to 30 days in prison and imposed a fine of $750 for his conviction of obstructing official business.

{¶10} Morris now appeals from his conviction of obstructing official business. His assignment of error states:

> The guilty verdict cannot be upheld because evidence and testimony presented at trial did not establish appellant's guilt beyond a reasonable doubt.

{¶11} Under the assignment of error, Morris intermingles a sufficiency-of-the evidence and a manifest-weight-of-the-evidence claim. We address the sufficiency claim first, because it disposes of the appeal.

{¶12} When assessing a challenge of sufficiency of the evidence, a reviewing court examines the evidence admitted at trial and determines whether such evidence, if

believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. "The 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." *Id*. A reviewing court is not to assess "whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction." *State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541 (1997).

Obstructing Official Business

{¶13} Obstructing official business is defined in R.C. 2921.31, which states in relevant part:

> (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.

{¶14} Obstructing official business as defined in R.C. 2921.31(A) has five essential elements: "'(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, (4) while the official is acting in the performance of a lawful duty, and (5) the defendant so acts without privilege.'" *Brooklyn v. Kaczor*, 8th Dist. Cuyahoga No. 98816,

2013-Ohio-2901, ¶ 7, quoting *State v. Kates*, 169 Ohio App.3d 766, 2006-Ohio-6779, 865 N.E.2d 66, ¶ 21 (10th Dist). *See also State v. Dice*, 3d Dist. Marion No. 9-04-41, 2005-Ohio-2505, ¶ 19, and *State v. Brickner-Latham*, 3d Dist. Seneca No. 13-05-26, 2006-Ohio-609, ¶ 25.

Officers' Testimony Regarding Defendant's Conduct While in the Police Vehicle

{¶15} On appeal, the state focuses exclusively on Morris's conduct while he was transported to the police station to support his conviction of obstructing official business. The state presented at trial the following testimony from two police officers.

{¶16} Officer John Jarrell testified that when he and other officers arrived, Douglas Morris approached the officers and reported that Wade jumped on him and he subsequently stabbed Wade. The officers immediately detained Morris, handcuffing him and placing him in the back of Officer Jarrell's patrol vehicle, while they investigated the stabbing incident. Morris became agitated and confused as to why the police arrested him when he himself called the police to report the incident. He was uncooperative while getting into the police vehicle. When the police vehicle arrived at the police station, Morris would not get out of the vehicle on his own. Officer Jarrell and his partner had to physically lift him out. Once they got Morris to his feet, however, Morris was cooperative and walked on his own to the booking center.

{¶17} Officer Jarrell's partner, Officer Brandon Melbar, testified that when he and Officer Jarrell transported Morris to the police station for booking, Morris laid on his side in the back seat and refused to sit up, complaining of discomfort. The officers had to

pull over their vehicle at one point because of Morris's continual complaint of discomfort. The officers told him he would breathe better if he sat up. Morris refused and called the officers names. He was also spitting in the backseat. Officer Melbar testified that, when they arrived at the police station, Morris told them he had problems breathing and his back hurt, and "[t]hat's why it took him a little while to get out of the car."[1] It took 20 to 30 minutes for the officers to remove him from the vehicle.

Insufficient Evidence Supporting Obstructing Official Business

{¶18} The state argues Morris's refusal to exit the vehicle on his own, lying down and spitting in the back seat of the police vehicle, and verbal outbursts constituted the offense of obstructing official business. Under the case law authority, however, the officers' testimony, even viewed in the light most favorable to the state, was, as a matter of law, insufficient to support a conviction for the criminal offense of obstructing official business.

{¶19} Regarding Morris's refusal to exit the police vehicle on his own, the case law has required more than a mere failure to obey or respond to a law enforcement officer's request in order to support a conviction of obstructing official business. *Parma*

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[1]Officer Melbar testified as follows on cross-examination:

> Defense Counsel: He told you that he had problems breathing, right?
>
> Melbar: He told us once we got to [Central Processing Unit] he had problems breathing. That's why it took him a little while to get out of the car.

v. Campbell, 8th Dist. Cuyahoga Nos. 79041 and 79042, 2001 Ohio App. LEXIS 4907, 9 (Nov. 1, 2001), citing *Garfield Hts. v. Simpson*, 82 Ohio App.3d 286, 611 N.E.2d 892 (8th Dist.1992).

{¶20} Similarly, Morris's verbal outburst while in the backseat of the police car, certainly offensive and ill-advised as it was, is also insufficient to support this conviction. The courts have required evidence reflecting "affirmative acts, not oral statements or inaction, which hamper or impede a public official in the performance of lawful duties." *State v. Cochenour*, 4th Dist. Ross No. 1371, 1989 Ohio App. LEXIS 525, 4 (Feb. 16, 1989), citing *Dayton v. Rodgers*, 60 Ohio St.2d 162, 398 N.E.2d 781 (1979); *Columbus v. Michel*, 55 Ohio App.2d 46, 378 N.E.2d 1077 (10th Dist.1978), and *Hamilton v. Hamm*, 33 Ohio App.3d 175, 514 N.E.2d 942 (12th Dist.1986).

{¶21} In *Cochenour*, the defendant struggled with the officers, who were forced to restrain him. The Fourth District noted the defendant "did more than merely make offensive oral statements and refuse to cooperate with the police." *See also State v. McCrone*, 63 Ohio App.3d 831, 580 N.E.2d 468 (9th Dist.1989) (an affirmative act by the defendant is required); *State v. Harrell*, 2d Dist. Montgomery No. 21736, 2007-Ohio-4550, ¶ 12; *State v. Prestel*, 2d Dist. Montgomery No. 20822, 2005-Ohio-5236, ¶ 16.

{¶22} In contrast, there was no testimony here from the officers that Morris engaged in affirmative acts such as struggling with, kicking, or striking the officers, stiffening his body, or otherwise physically resisting the officers' efforts to remove him

from the vehicle. Even if there were such an affirmative act, the state still must prove not only that the act was committed with an intent to obstruct the officers but also that the defendant succeeded in actually hampering or impeding them. *State v. Crowell*, 189 Ohio App.3d 468, 2010-Ohio-4917, 938 N.E.2d 1115, ¶ 12. *See also State v. McCoy*, 2d Dist. Montgomery No. 22479, 2008-Ohio-5648, ¶ 16; *State v. Cooper*, 151 Ohio App.3d 790, 2003-Ohio-1032, 786 N.E.2d 88 (2d Dist.). As this court noted, obstructing official business is established "where there is both an illegal act which quickens the duty of the police officer to enforce the law, and interference with intent to impede that enforcement." *Middleburg Hts. v. Szewczyk*, 8th Dist. Cuyahoga No. 89930, 2008-Ohio-2043, ¶ 23. Even viewing the officers' testimony in a light most favorable to the state, there was no necessary convincing evidence that Morris refused to exit the police vehicle on his own with an intent to impede the officers' duty. The officers acknowledged at trial that Morris eventually explained to them that he requested help to exit the vehicle because of his breathing difficulties and back problems. The officers also acknowledged that once he got on his feet, Morris exhibited cooperative behavior, walking on his own to the booking center.

{¶23} The state argues Morris's lying down on the back seat (instead of sitting up) and spitting were affirmative acts supporting his conviction. This court has consistently required conduct substantially more egregiously obstructive than Morris's conduct in order to establish the element of an affirmative act done with an intent to impede law enforcement.

{¶24} For example, in *State v. Vargas*, 8th Dist. Cuyahoga No. 97377, 2012-Ohio-2768, a suspect involved in a car accident ran away from the investigating officers, then descended down a steep ravine and jumped into a river, to evade the officers. The officers had to first chase him and then to rescue him, which took several hours and put himself and the rescuing police and fire personnel at risk of harm. In *Szewczyk*, while the police attempted to place the suspect under arrest for disorderly conduct, the suspect pushed an officer, kicked the windows of the police cruiser, and repeatedly threatened the officers that he would assault them when he was uncuffed. In *State v. Wilson*, 8th Dist. Cuyahoga No. 96627, 2011-Ohio-6886, the suspect ignored the police orders and fled after the police officers arrived to investigate a report of a man with a gun. A chase ensued, and the police were able to apprehend the defendant only after he fell into a creek. In *State v. Williams*, 8th Dist. Cuyahoga No. 89574, 2004-Ohio-4476, the defendant ignored the police order to stop and the police chased the defendant for several minutes before apprehending him. That defendant also swallowed drugs to eliminate incriminating evidence, which forced the police to transport him to the hospital to have his stomach pumped.

{¶25} We have a duty to clearly distinguish this case from those above. Morris's conduct of lying down in the back seat of the police vehicle does not rise to the level of obstruction required for a conviction. Moreover, the evidence does not establish he was lying down on the seat with an intent to impede the officers' duty. The officers' own testimony reflects that the officers pulled over their vehicle at one point not because

Morris's lying down impeded the operation of the vehicle, but because Morris's continual complaint of breathing and back discomfort necessitated an inquiry into the safety of his physical condition. Neither did Morris's spitting, noxious as it was to the officers, interfere with the officers' duty of transporting him to the police station. The evidence presented by the state at most reflects a highly agitated grandfather who believed he was aggrieved and his resultant lack of cooperation. This is insufficient to support a conviction for the serious matter of obstructing official business. The assignment of error is sustained.

{¶26} Judgment reversed; appellant's conviction is vacated. This cause is remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover of said appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

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

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TIM McCORMACK, JUDGE

EILEEN A. GALLAGHER, J., CONCURS;
KATHLEEN ANN KEOUGH, P.J., DISSENTS (WITH SEPARATE DISSENTING OPINION ATTACHED)

KATHLEEN ANN KEOUGH, P.J., DISSENTING:

{¶27} Respectfully, I dissent because I would find the evidence sufficient to sustain Morris's conviction for obstructing official business.

{¶28} The evidence demonstrated that Morris began to verbally abuse the officers after he was placed under arrest, and that the abuse became increasingly worse as he was being transported to jail. He was uncooperative in getting into the cruiser after his arrest, and once in the cruiser, he actively disobeyed the officers' instructions to sit up, forcing the officers to pull the cruiser to the side of the road. The officers again ordered Morris to sit up, which he refused to do. Instead, he spat in the back of the cruiser and continued his verbal abuse, telling the officers that they were "pieces of s—," he "hated the police," and he was "going to kill them." When they arrived at the jail, Morris, who is 6'2" and weighs 300 pounds, resisted by refusing to get out of the police cruiser, forcing the two officers to physically lift him out of the car, an ordeal that lasted 30 minutes. After he was taken to booking, Morris continued to behave belligerently and verbally abuse the officers and jail staff.

{¶29} The majority concludes that the evidence was insufficient because Morris's conduct was not "egregiously obstructive," and he did not commit any "affirmative act" to hamper the officers' performance of their duties. I disagree. Officer Jarrell's and Officer Melbar's testimony, if believed, demonstrates that Morris actively resisted the officers' orders to exit the police car at the station.

{¶30} Officer Jarrell testified that Morris "refused to get out of the car," forcing him and his partner to "physically lift" Morris out of the car. Likewise, Officer Melbar testified that Morris "refused" to get out of the patrol car, and that the officers "basically had to pull him out of the back of the cop car." The majority discounts this testimony because it concludes that Morris told the officers of his breathing problems when they reached the police station, and then asked for help in exiting the car due to his health problems. The only evidence that Morris asked for help came from Morris himself. Neither Officer Jarrell nor Officer Melbar testified that Morris asked them for help in exiting the patrol car due to his health issues; rather, both officers testified that he refused to get out of the car and, as a result, they had to struggle for 30 minutes to pull him out of the car. Furthermore, Officer Melbar testified that Morris only informed the officers of his breathing problems when they reached the Central Processing Unit in the jail, after Morris was out of the car.

{¶31} The test for sufficiency of the evidence is whether the evidence at trial, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492, at paragraph two of the syllabus. In light of the officers' testimony that they were forced to pull Morris out of the car because of his refusal to exit the car, I would find that the evidence was sufficient, if believed, to establish that Morris actively resisted the officers' efforts to get him out of the patrol car at the jail. Subjecting police to verbal abuse and physically resisting police officers have been held to be affirmative acts sufficient to convict a defendant of obstructing official

business. *Szewczyk*, 8th Dist. Cuyahoga No. 89930, 2008-Ohio-2043, at ¶ 25; *State v. Florence*, 12th Dist. Butler No. CA2013-08-148, 2014-Ohio-2337, ¶ 12.

{¶32} I would find that the evidence demonstrated that not only did Morris spit at the officers, tell them he hated them, and that he was going to "kill" them, but that he actively and affirmatively resisted their orders to get out of the patrol car, forcing the officers to physically lift him out of the car. Morris's actions were overt acts, committed with an intent to impede the officers' attempt to effectuate his arrest, that caused a significant delay in the officers' performance of their duties, and placed their safety at risk. Accordingly, I would find the evidence sufficient to sustain Morris's conviction for obstructing official business.