STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1873

State of Minnesota,
Respondent,

vs.

Lisa Lyn O'Hanlon,
Appellant.

Filed September 26, 2011
Affirmed
Peterson, Judge

Winona County District Court
File No. 85-CR-10-1259

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

Karin Sonneman, Winona County Attorney, Justin A. Wesley, Christina Marie Davenport, Assistant County Attorneys, Winona, Minnesota (for respondent)

Thomas M. Manion, Jr., Manion & Wheelock, PLLP, Lanesboro, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Peterson, Judge; and Halbrooks, Judge.

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

PETERSON, Judge

In this appeal from a conviction of two counts of obstructing legal process or arrest in violation of Minn. Stat. § 609.50 (2008), appellant argues that the prosecutor

committed misconduct when he (1) told the jury that appellant should have contested the legal process involved at the order to show cause hearing (which is a civil action) and that she should not have "fought it out in criminal court," thereby denigrating her defense and right to a trial; and (2) made statements in his final statement to the jury that likely confused jurors on the issue of intent. We affirm.

FACTS

Winona County Sheriff's Deputy Rodney Hansen and St. Charles Police Officer Martha Kelly went to appellant Lisa Lyn O'Hanlon's residence to serve legal papers on her. When the officers got there, Hansen stated that they were there to serve legal papers, and appellant said, "Oh, you're not here about the warrant?" Kelly confirmed that there was an arrest warrant out for appellant, and Hansen told appellant that she would be arrested.

Appellant lay down on the ground and told the officers that she was not going to make their jobs easy and that she would make them earn their money. Kelly removed the handcuffs from her belt and asked appellant to roll over onto her stomach to be handcuffed, but appellant refused. The officers rolled appellant over onto her stomach, handcuffed her, then rolled her over onto her back, and sat her up. Appellant went limp and leaned against the officers, so they had to lift her into the squad car. Appellants' actions made the officers' job "very difficult." Appellant also swore at the officers and accused them of acting unlawfully.

Appellant refused to get out of the squad car at the jail, and two deputies had to pull her out of the car and carry her inside. Once in the jail, appellant refused to stand up,

so she was placed in a restraint chair. The restraint chair was used because it had wheels, and appellant was not restrained in the chair. Shift commander Heather Jorgensen told appellant that she could either post $1,070 in bail or pay a $50 warrant fee, and then she would be released. Normally, only one or two deputies are needed to complete the booking process, but, due to appellant's difficult behavior, four deputies were needed. On a scale of one to ten, Jorgensen and a deputy rated the difficulty of appellant's behavior at seven or eight.

Appellant was charged with two counts of obstructing legal process in violation of Minn. Stat. § 609.50, subd. 1(1)-(2) (2008). The case was tried to a jury, which found appellant guilty as charged. The district court stayed imposition of sentence and placed appellant on probation. This appeal followed.

D E C I S I O N

Appellant did not object to the closing argument. "[A]n unobjected-to error can be reviewed only if it constitutes plain error affecting substantial rights." *State v. Ramey*, 721 N.W.2d 294, 297 (Minn. 2006). "For unobjected-to prosecutorial misconduct, we apply a modified plain error test." *State v. Wren*, 738 N.W.2d 378, 389 (Minn. 2007). Under this test, appellant must establish that the alleged prosecutorial misconduct constitutes error and that the error was plain. *Id.* at 393. Error is plain if it "contravenes case law, a rule, or a standard of conduct." *Ramey*, 721 N.W.2d at 302. The burden then shifts to the state to show that the error did not affect appellant's substantial rights. *Id.*

Appellant argues that the prosecutor committed misconduct by stating that appellant "should not have 'fought it out in criminal court.'" "It is misconduct for a

prosecutor to attack a defendant for exercising his right to a fair trial and to encourage the jury to punish him for what the prosecutor perceives as further victimization of the victim." *State v. McNeil*, 658 N.W.2d 228, 235 (Minn. App. 2003). Appellant does not provide a citation to the record, but the only argument referring to fighting it out in court referred to the underlying civil matter. The prosecutor stated:

> There was a civil judgment in [the underlying] case and she was ordered to disclose financial information. . . . That part of it is a civil matter.
>
> The criminal part of it, what she's on trial here for today, is that when the officers went to – when they went to execute that arrest warrant, [appellant] acted in a certain manner that obstructed the legal process. That is the crime here. It doesn't matter that [appellant] – if she wanted to fight that, she could have shown up for that order to show cause hearing on April 27th. That was her time to contest the legitimacy of that civil judgment. That was her time to do it. It's not to fight it out on the streets with the officers, and it's not to fight it out in the criminal court. The charges are about [appellant] being validly placed under arrest on a valid arrest warrant signed by a judge of district court in Winona County, and [appellant's] subsequent reaction to being placed under arrest.
>
> So rather than go through the process─process of fighting it in court to show up at the order to show cause hearing, she physically went limp in the street and told the officers, "I'm not gonna help you. Gonna make you earn your money. You're gonna have to do this job on your own. I'm not gonna be compliant."

Because the argument referred to appellant's opportunity to assert a defense in the underlying civil matter and not to the criminal charges, the argument was not plain error.

Appellant also argues that the prosecutor committed misconduct by stating that appellant "said many things that convey her *attempt* to obstruct the legal process"

because it misstated the intent element of the offense of obstructing legal process. The prosecutor stated:

> Now, the state also has to prove that [appellant] intended to obstruct the legal process. That she intended to obstruct, hinder, prevent, interfere with or deter the police officers from effectuating that arrest. Now, how can you know [appellant's] intent? Well, she said she's been planning it for weeks. She lays down on the ground. You can infer that from her actions. But you don't need to just rely on the actions that she did the things that she did, you can rely on her words. She said many things that convey her attempt to obstruct the legal process.

The reference to attempt appears to be an inadvertent misstatement. Read as a whole, the argument did not misstate the intent element. Also, the district court instructed the jury to decide the case according to the law as stated by the court and to disregard any statement of law given by an attorney that differed from that stated by the court. It is presumed that the jury followed the district court's instructions. *State v. Taylor*, 650 N.W.2d 190, 207 (Minn. 2002).

Affirmed.