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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2202**

State of Minnesota,
Respondent,

vs.

James Al Burr,
Appellant.

**Filed October 9, 2012
Affirmed
Kalitowski, Judge**

St. Louis County District Court
File No. 69DU-CR-11-1913

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

Mark S. Rubin, St. Louis County Attorney, Jonathan D. Holets, Assistant County Attorney, Duluth, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Theodora Gaitas, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Kalitowski, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant James Al Burr challenges his conviction of gross-misdemeanor obstruction of legal process, in violation of Minn. Stat. § 609.50, subds. 1(2), 2(2) (2010),

arguing that the evidence was insufficient to support the jury's finding that his conduct was accompanied with force or violence or a threat thereof. We affirm.

DECISION

When considering a claim of insufficient evidence, our 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). This court assumes "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). We will not disturb the verdict if the jury "could reasonably conclude that the defendant was guilty of the charged offense, given the facts in evidence and the legitimate inferences that could be drawn therefrom." *State v. Crow*, 730 N.W.2d 272, 280 (Minn. 2007).

Whoever intentionally "obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties" may be found guilty of obstructing legal process. Minn. Stat. § 609.50, subd. 1(2). The offense may be sentenced as a felony if "the person knew or had reason to know that the act created a risk of death, substantial bodily harm, or serious property damage," or "the act caused death, substantial bodily harm, or serious property damage." *Id.*, subd. 2(1) (2010). The offense may be sentenced as a gross misdemeanor "if the act was accompanied by force or violence or the threat thereof." *Id.*, subd. 2(2). In other cases, the offense may be sentenced as a misdemeanor. *Id.*, subd. 2(3) (2010).

Around 1:15 a.m. on June 18, 2011, police officers Amber Weber and Jacob Peterson were called to a Duluth detoxification facility because appellant was “out of control and banging his head against a wall.” Appellant had voluntarily entered the facility and asked to be taken to a mental-health unit of a hospital. The officers attempted to restrain appellant in order to stop him from banging his head against the facility’s glass wall, and appellant flailed his arms and resisted. After a brief struggle, the officers forced appellant to the ground and handcuffed him.

Appellant concedes that the evidence was sufficient to support a conviction of misdemeanor obstruction of legal process under Minn. Stat. § 609.50, subds. 1(2), 2(3). Thus, he concedes that he intentionally obstructed or resisted the officers. But he argues that the evidence was insufficient to support the jury’s finding that “the act was accompanied by force or violence or the threat thereof.” *Id.*, subd. 2(2).

The relevant terms—“force or violence or the threat thereof”—are not defined in the statute, and therefore “are to be construed according to their common and approved usage.” *State v. Engholm*, 290 N.W.2d 780, 784 (Minn. 1980). The supreme court has held that the lack of a statutory definition for these terms in section 609.50 means that “the words have such a distinct and common usage that they require no further definition.” *Id.* at 785. In *Engholm*, the supreme court held that two defendants acted with the necessary force or threat thereof when one defendant threatened to kill a police officer, and the second defendant wrestled with the officer to allow the first defendant to escape. *Id.* at 784. And in *State v. Diedrich*, this court held that the district court erred as a matter of law by concluding that the defendant’s conduct, which included pushing an

officer's face with an open palm, did not meet the statutory threshold for force or violence. 410 N.W.2d 20, 21, 23 (Minn. App. 1987).

At trial, a video of the altercation at the detoxification facility was admitted into evidence and played for the jury. Officer Weber testified that when she and Officer Peterson initially attempted to restrain appellant, he “started to fight[,] . . . flail his arms[,] and resist” the officers. Officer Peterson testified that appellant “immediately became very aggressive by flexing his muscles and creating fists.” Officer Weber stated that appellant attempted “to throw [the officers] off of him” and “lurched several times toward the door.” The officers believed he was attempting to escape, and tried to “force him down to the ground, but he pulled his arms away, kept flailing his arms, [and] kicked some.” Officer Peterson testified that, as he was standing behind appellant, he observed appellant “raise[] his right arm up and [bring] it way back behind himself creating a fist,” and he believed appellant was about to strike Officer Weber. To prevent appellant from striking her, Officer Peterson pulled appellant to the ground, and appellant grabbed ahold of Officer Peterson's belt. The officers testified that, in order to force appellant to his stomach and handcuff him, they had to strike him with their arms and knees. Both officers testified that they feared they would be injured in the altercation, and Officer Peterson testified that he suffered an injury to his abdomen from appellant's grabbing ahold of his belt.

Based on this evidence, the jury could reasonably infer that appellant acted with force when he attempted to throw the officers off him, flailed his arms, kicked his legs, and grabbed Officer Peterson's belt. Also, the record indicates that appellant resisted the

officers with force because they had to strike him with their arms and knees in order to subdue him. And from Officer Peterson's testimony, the jury could reasonably infer that appellant threatened force or violence when he raised his arm and created a fist. Assuming the jury believed the state's evidence, and disbelieved evidence to the contrary, we conclude that the evidence was sufficient to permit the jury to find that appellant acted with force or a threat of force while resisting the officers.

Appellant argues that he did not intend to strike Officer Weber, but only inadvertently flailed his arms. But although the video of the incident may be reasonably susceptible to differing interpretations as to appellant's arm movements, we must view the evidence in the light most favorable to the conviction. On this record, the jury could reasonably infer that appellant intended to strike Officer Weber or threatened to do so.

Appellant also argues that the evidence does not support a finding that he acted with the intent to harm the officers or cause them to fear harm. But this argument assumes that the intent to inflict harm or fear of harm is an element of gross-misdemeanor obstruction of legal process. Our reading of the statute concludes otherwise.

The plain language of the statute prohibits acts committed for the purpose of resisting or obstructing officers in the performance of their official duties. Minn. Stat. § 609.50, subd. 1 ("Whoever *intentionally* does any of the following" (emphasis added)); *see* Minn. Stat. § 609.02, subd. 9(3) (2010) (defining "intentionally" as a mental state in which "the actor either has a purpose to do the thing or cause the result specified

or believes that the act performed by the actor, if successful, will cause that result”).

Appellant concedes that he acted with the intent to obstruct, resist, or interfere.

The gross-misdemeanor penalty provision states:

A person convicted of violating subdivision [one] may be sentenced as follows . . . if the act was accompanied by force or violence or the threat thereof, and is not otherwise covered by clause [one], to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

Minn. Stat. § 609.50, subd. 2(2). We interpret statutes in accordance with their plain language. Minn. Stat. § 645.16 (2010). Because the plain language of the gross-misdemeanor penalty provision does not include an additional intent element, we conclude that the state was not required to prove that appellant’s act was committed for the purpose of causing harm or fear of harm. *Cf.* Minn. Stat. § 609.50, subd. 2(1)(i) (adding an additional intent element to felony obstruction of legal process by stating that the offense may be sentenced as a felony if “the person *knew or had reason to know* that the act created a risk of death, substantial bodily harm, or serious property damage” (emphasis added)).

Finally, appellant argues that if his physical resistance here supports a conviction under section 609.50, subdivision 2(2), there is no meaningful difference between subdivision 2(2), which carries a gross-misdemeanor penalty, and subdivision 2(3), which carries only a misdemeanor penalty. Relying on *State v. Morin*, appellant asserts that even misdemeanor obstruction of legal process requires physical conduct directed at an officer. 736 N.W.2d 691, 698 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007). But *Morin* did not hold that the only way a person can violate section 609.50 is by

engaging in physical conduct directed at an officer. *Id.* at 697 (stating that, under *State v. Krawsky*, 426 N.W.2d 875, 877 (Minn. 1988), the statute prohibits actions *and words* that have the effect of physically obstructing or interfering with an officer).

Moreover, the supreme court has rejected the argument that misdemeanor and gross-misdemeanor obstruction of legal process are not sufficiently distinguishable offenses, explaining that a “marked distinction between acts committed with force, violence, or threats and nonviolent acts . . . permeates statutory law and the common law.” *Engholm*, 290 N.W.2d at 785. Thus, there is a fact-specific distinction between conduct directed at an officer for the purpose of physically resisting or obstructing, and such conduct accompanied with force. Drawing this distinction is within the province of the fact-finder.

Here, after instructing the jury as to the elements of the offense of obstruction of legal process, the district court stated:

If you find the [d]efendant . . . guilty, you have an additional issue to determine and it will be put in the form of a question on the verdict form. The question is: Was the [d]efendant’s act accompanied by force or violence or a threat of force or violence[?]

The jury answered, “Yes.” Therefore, the jury was instructed to differentiate between the misdemeanor and gross-misdemeanor offenses, and found that the state had satisfied its burden of proof as to the gross-misdemeanor offense.

We conclude that the evidence was sufficient to support appellant’s conviction of gross-misdemeanor obstruction of legal process.

Affirmed.