STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

STATE OF WISCONSIN
Plaintiff-Respondent,

Case No. 2015 AP 1994 CR

v.

JEFFREY S. DECKER
Defendant-Appellant.

BRIEF OF PLAINTIFF-RESPONDENT

ON NOTICE OF APPEAL FROM THE JUDGMENT OF CONVICTION
ENTERED FEBRUARY 4, 2015
WINNEBAGO COUNTY CIRCUIT COURT
THE HONORABLE SCOTT WOLDT, PRESIDING

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I. Statement of Issues Presented for Review

1) Whether the State presented sufficient evidence to support Mr. Decker's conviction.

   Trial Court Answered: Yes.

2) Whether Mr. Decker was denied his right to present a defense.

   Trial Court Answered: No.

3) Whether Mr. Decker's closing argument was unfairly cut short.

   Trial Court Answered: No.

4) Whether Mr. Decker should receive a new trial in the interest of justice.

   The Trial Court was never presented with this issue.

II. Statement on Oral Argument and Publication

The State is requesting neither publication nor oral argument, as this matter involves only the application of well-settled law to the facts of the case.

III. Statement of the Case

On May 16, 2014 UW Oshkosh Police Lt. Chris Tarmann, in full uniform, was working security for the opening of a new conference center on the UW-Oshkosh campus. R (record) 35:PP (pages) 5-6.

Lt. Tarmann knows Mr. Decker, and believed, based on internal emails and other office communication, that on that date that the UW system had excluded Decker from the campus. R35:P6.

UW Oshkosh Police Chief Joseph LeMire testified that prior to the event at the conference center on May 16, 2014, Mr. Decker had notice of the UWO exclusion by both email and regular mail. R35:PP33-35.

As Lt. Tarmann observed Mr. Decker entering the conference center, Lt. Tarmann called out to talk before Mr. Decker entered. *Id.* Mr. Decker disregarded Lt. Tarmann, and entered the building. R35:P7.

Lt. Tarmann and Chief LeMire approached Mr. Decker in the conference center. R35:PP 7-8. Mr. Decker moved to walk quickly away from the two officers, who then took him by the arm and asked him to leave the room to talk. R35:P8. Mr. Decker then began to struggle, dropped to the floor, grabbed on to furniture, and otherwise resisted the officers. *Id.*

Mr. Decker's conduct made the performance of Lt. Tarmann's official duties, including discussing Mr. Decker's exclusion from the UW-Oshkosh campus, more difficult. R35:P9.

Mr. Decker elected a court trial. R35.

At the opening of the Court trial, the Court announced it has quashed Mr. Decker's subpoena for a newspaper photographer *sua sponte.* R35:P3.

During closing argument, the Court engaged Mr. Decker in questioning. R35:PP54-61. After a certain point, the Court told Mr. Decker it had "heard enough," and issued its decision. R35:PP61-62.

The Court found Mr. Decker guilty. R35:P62. Mr. Decker timely appeals.

IV. Argument

1) The State presented sufficient evidence to convict Mr. Decker.

To determine whether evidence is sufficient to support a conviction, an appellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. Review of a sufficiency of the evidence claim is therefore very narrow, giving great deference to the determination of the trier of fact. State v. Hayes, 2004 WI 80, ¶¶ 56-57.

To convict Mr. Decker of obstructing an officer, the State needed to prove four elements:

1. The defendant obstructed an officer. To obstruct an officer means that the conduct of the defendant prevents or makes more difficult the performance of the officer's duties
2. The officer was doing an act in an official capacity.
3. The officer was acting with lawful authority
4. The defendant knew that the office acting in an official capacity and with lawful authority and the defendant knew his conduct would obstruct the officer.

Wis. Jury Instruction 1766 – Obstructing an Officer – Wis. Stat. 961.41(1).

The evidence reviewed in the light most favorable to the state is sufficient to sustain the conviction. Mr. Decker's conduct – going limp, holding on to furniture, and physically resisting – obstructed Lt. Tarmann. Lt. Tarmann was doing an act – contacting Mr. Decker to discuss his unlawful presence on the UWO campus – in an official (not personal or other) capacity. Lt. Tarmann was acting with lawful authority, it being reasonable when a police officer is told by the UW legal system that an individual is excluded from a UW campus, that officer act on that information. The State presented sufficient evidence that Mr. Decker knew Lt. Tarmann was a police officer (Tarmann was in full uniform, Tarmann and Decker knew each other personally and professionally before this incident (R35:P7)) and as the trial court found, "[c]learly the officers were

acting with official capacity because there was a restriction to keep [Mr. Decker] off of campus, [Mr. Decker] knew that [he was] not supposed to be on there, so [Mr. Decker] knew that the officers were acting with official capacity and lawful authority." R35:P62.

Sufficient evidence supports Mr. Decker's conviction.

2) Mr. Decker was not denied his right to present a defense.

Mr. Decker argues on appeal that he was not allowed to defend his obstruction with a theory that the exclusion order was defective ("not real, not valid, or at least not reliably so"), and illegal. Br. of Appellant, P28. That an order reasonable relied on by an officer might be collaterally defective is not a defense to obstructing.

Police officers reasonably and lawfully rely on countless official statuses in performing their official duties – database information about abuse injunctions, warrants, driving license statuses, just to name a few. Mr. Decker recognizes that the lawfulness of his presence on UW land can be litigated if a proceeding is filed against him. He cites in his briefing, and at trial, numerous instances when he has won legal battles about the lawfulness of injunctions and exclusion orders. *See also* Board of Regents v. Decker, 2014 WI 68.

The issue in this case is whether Mr. Decker could obstruct an officer approaching him about the then-newest exclusion order. Even assuming *arguendo* the order was defective, Mr. Decker may not obstruct an officer acting in reasonable reliance on it, any more than a defendant could lawfully resist an officer acting on reliable DOT information that the defendant's driver's license is revoked, even if the defendant believes there was a procedural defect with the revocation.

Only evidence that is relevant is admissible. Wis. Stat. 904.02. The Court found that the officers were acting with lawful authority, and the defendant knew the officers were acting with lawful authority. Evidence about the substantive and procedural saga of Mr. Decker's current and prior exclusion orders is not relevant to any of the four elements of obstructing an officer, and the evidence was properly excluded.

3) Mr. Decker was given sufficient time for closing argument.

The control of the content, duration of the argument, and the form of the closing argument are within the sound discretion of the trial court. Reversal will not be granted unless there is an abuse of discretion that was likely to have affected the fact finder's verdict. State v. Lenarchick, 74 Wis. 2d 425, 457-58 (1976). While it is true that Mr. Decker was told the trial

court had "heard enough," R15:P61, there is nothing in Mr. Decker's appellate briefing that suggests a longer closing argument would have affected the fact finder's verdict.

4) Mr. Decker's conviction should not be reversed in the interest of justice.

Wis. Stat. 752.35 allows a reviewing court to order a new trial "if it appears from the record that the real controversy has not been fully tried, or that it is probable that justice has for any reason miscarried." In this case Mr. Decker was convicted for obstructing officers contacting him about a UW system order trespassing him from the grounds. The real controversy was fully tried, and justice did not, for any reason, miscarry.

Mr. Decker does not point to any prejudice from the trial court's *sua sponte* quashing of his witness subpoena. As the State reviews this record, the procedure used to quash the warrant was error, but I do not see any harm from this error. Because Mr. Decker is *pro se* I ask the Court consider an independent review of this error. The State believes that a fair review of the record does not show that this error caused any harm requiring a new trial under Wis. Stat. 752.35.

V. Conclusion

For the reasons set forth above, Mr. Decker's conviction should be affirmed.

Dated at Oshkosh, Wisconsin this __ day of March, 2016.

By: _____
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Attorney for the Respondent

CERTIFICATIONS

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 1365 words.

I further certify pursuant to Wis. Stat. § 809.19(b)(12)(f) that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of person, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

I further certify that on the date of signature I routed this brief to our office station for first class US Mail Postage to be affixed and mailed to:

Clerk's Office (ten copies)
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Jeffrey Decker
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Dated this ____ day of March, 2016 at Oshkosh, Wisconsin by:

_____
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