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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT 4

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Case No. 2019AP0285
Circuit Court Case No. 2018TR004379

GRANT COUNTY,
Plaintiff-Respondent,

v.

DALE THOMAS ANDREJCZAK,
Defendant-Appellant.

ON APPEAL FROM A FINAL ORDER ENTERED ON JANUARY 11, 2019,
IN THE CIRCUIT COURT FOR GRANT COUNTY, THE HONORABLE CRAIG
R. DAY, PRESIDING

BRIEF OF THE PLAINTIFF-RESPONDENT

Lisa A. Riniker
District Attorney
State Bar No. 1036164
Grant County District Attorney's Office
130 West Maple Street
Lancaster, Wisconsin 53813
(608) 723-4237

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CASES CITED

Global Prods. Corp. v. Ecklund, 2002 WI App 91, 253 Wis.2d
588,644 N.W.2d 269 2,4

State v. Foster, 191 Wis.2d 14,528 N.W.2d 22 (1995). . 3

State v. Hamilton, 120 Wis.2d 532,356 N.W.2d 169 (1984)4

STATUTES CITED

Wis. Stat. §805.17(2). 2

STATEMENT ON ORAL ARGUMENT

The County does not request oral argument.

STATEMENT ON PUBLICATION

The County does not request publication.

STATEMENT OF THE FACTS

On November 18, 2018, Grant County Deputy Duane Jacobson was on duty and field training fellow deputy Andrew Nelson.(R.5:4). They were approached in the City of Platteville, by a bar bouncer who had some concerns about a female patron's age. (R.5:4). Deputy Nelson began to investigate that issue by speaking with the female (Ms. Payne) while Deputy Jacobson observed the investigation from approximately five feet away. (R.5:5,8).

Dale Andrejczak walked between Deputy Jacobson and Deputy Nelson as he was conducting his investigation, getting approximately two feet away from the female. (R.5:5-6). As he did so, Mr. Andrejczak looked toward the female and stated to her not to tell anything to law enforcement. (R.5:6).

After Mr. Andrejczak said that, the female became confused and hesitant to speak with law enforcement which was wholly different from her prior cooperative nature. (R.5:6).

Deputy Jacobson asked Mr. Andrejczak to stop and questioned why he said what he did to the female. (R.5:6-7). In response, Mr. Andrejczak said that he did not say anything to her. (R:5:7).

Grant County issued a citation to Mr. Andrejczak for Resist/Obstruct Officer (Forfeiture) alleging a violation of Grant County ordinance 206-8, which incorporates Wis. Stat. Sec. 946.41(1). (R.1).

The citation proceeded to a court trial on January 11, 2019. At the trial, the defendant testified that he was not speaking to the female, but rather to a friend. (R.5:11-12). This assertion was disputed by Deputy Jacobson. (R.5:13-14). The Honorable Craig R. Day found the defendant guilty after determining that his testimony was not credible. (R.5:17-18).

STANDARD OF REVIEW

A circuit court's factual findings are not set aside unless they are clearly erroneous. Wis. Stat. §805.17(2). It is for the circuit court to resolve conflicts in testimony and to determine the credibility of witnesses. *Global Steel Prods. Corp. v. Ecklund*, 2002 WI App 91, ¶10, 253 Wis.2d 588, 644 N.W.2d 269. The record should be

searched for evidence to support the circuit court's findings, not for findings that the circuit court could have made but did not. *Id.*

LEGAL ARGUMENT

Jury instructions represent a painstaking effort to accurately state the law and to provide uniformity. *State v. Foster*, 191 Wis.2d 14, 27, 528 N.W.2d 22 (1995).

The obstructing instruction is numbered 1766 and sets forth 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 (officer) was an officer acting in an official capacity and with lawful

(5) authority and that the defendant knew (his)(her) conduct would obstruct the officer.

Mr. Andrejczak alleges that the basic requirements of proof were not met. The County asserts that when Mr. Andrejczak interjected himself into an ongoing investigation by telling the female subject not to tell anything to law enforcement, he was acting in such a way as to make the officer's job more difficult. This attempt was accomplished when the female became uncooperative.

Mr. Andrejczak alleged at the court trial that he was speaking to a friend who was a bit in front of him. This testimony was deemed not credible by the court. Credibility of witnesses is a trial court determination. *Global Steel Prods. Corp. v. Ecklund*, 2002 WI App 91, ¶10. The Court's finding is supported by rebuttal testimony of Deputy Jacobson who said that no one was with Mr. Andrejczak on this particular evening. (R.5:13-14).

Mr. Andrejczak asserts, without argument, that this case is similar to *State v. Hamilton*, 120 Wis.2d 532, 356 N.W.2d 169 (1984). The County disagrees.

The *Hamilton* court was charged with determining whether refusing to provide identifying information, in and

of itself, is obstructing. The court determined it was not.

The County will not go into the reasoning of the *Hamilton* case, as it has no bearing on the present matter. This is not a situation of any withholding of information but, rather, an interjection of information to obstruct.

Lastly, Mr. Andrejczak makes a brief reference to First Amendment rights. That reference is made in the context of his assertion that his comment was made to a friend rather than the female being investigated by law enforcement. This is an assertion which the trial court determined was not credible and should not be reviewed by this court.

CONCLUSION

The County requests the Court of Appeals to affirm the trial court's finding of guilt.

Dated this 26th day of April, 2019.

Respectfully submitted,

Lisa A. Riniker
District Attorney
State Bar No. 1036164

District Attorney's Office
Grant County Courthouse
130 West Maple Street
Lancaster, WI 53813
(608) 723-4237

FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in § (Rule) 809.19(8)(b) and (c) for a brief produced with a monospaced font. The length of the brief is 6 pages.

Dated this 26th day of April, 2019.

Lisa A. Riniker
Grant County District Attorney
State Bar No. 1036164
Grant County, Wisconsin

**CERTIFICATE OF COMPLIANCE
WITH WIS STAT. §(RULE) 809.19(12)**

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 26th day of April, 2019.

Lisa A. Riniker
Grant County District Attorney
State Bar No. 1036164
Grant County, Wisconsin

SUPPLEMENTAL APPENDIX INDEX

Jury Instruction 1766 - Obstructing an Officer . . . 101

SUPPLEMENTAL APPENDIX CERTIFICATION

I hereby certify that a supplemental appendix is filed with this brief and that it complies with the content requirements of Wis. Stat. § 809.19(2)(a).

Dated this 26th day of April, 2019.

Lisa A. Riniker
District Attorney
State Bar No. 1036164
Grant County, Wisconsin