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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0830**

Alfonso Carillo Buenaventura, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 5, 2018
Affirmed
Bratvold, Judge**

St. Louis County District Court
File No. 69VI-CR-14-980

Cathryn Middlebrook, Chief Appellate Public Defender, Sean Michael McGuire, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

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

Joel B. Lewicki, Michael K. Kearney, Colosimo, Patchin, & Kearney, Ltd., Virginia,
Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

In this appeal following a jury verdict, appellant argues that this court must reverse
his conviction of obstruction of legal process under Minn. Stat. § 609.50, subd. 1(2) (2016),

because the evidence is insufficient. Appellant makes two related arguments. First, he contends that the officers were not engaged in the performance of a legal duty. Second, he claims that his failure to comply was not obstruction. We affirm.

FACTS

Shortly after 4:00 p.m. on June 21, 2014, appellant Alfonso Carillo Buenaventura walked from a festival to his mother's house and then visited her neighbor to discuss something "really important." Shortly after, the neighbor called 911 to report Buenaventura's conduct, which she later testified was loud and threatening.

Buenaventura left the neighbor's property and walked toward the festival grounds. Three officers were dispatched to find Buenaventura and investigate the 911 call. One officer was on foot patrol and two officers were in a squad car. The foot patrol officer saw Buenaventura enter the festival grounds from an alley. When Buenaventura noticed the squad car approaching, Buenaventura turned around and began running back down the alley from which he had emerged. The foot patrol officer followed Buenaventura, identified himself as a police officer, and ordered him to stop. Buenaventura kept walking.

A few minutes later, Buenaventura stopped, turned to face the foot patrol officer, assumed a fighting stance, balled up his fist, and looked at the officer's utility belt. The officer ordered Buenaventura to turn around and place his hands behind his back. Buenaventura refused. The officer grabbed Buenaventura's balled-up hand, and Buenaventura resisted him. The officer put Buenaventura into a "bearhug," and wrestled him to the ground. Buenaventura continued to struggle and the officer radioed for assistance. The officer driving the squad car heard the foot patrol officer yell, "Stop

resisting. You're under arrest." The officer in the squad car assisted the foot patrol officer and placed Buenaventura in handcuffs. The officers searched Buenaventura's pockets despite him resisting by raising his legs.

A third officer arrived and together they struggled to put Buenaventura into the backseat of the squad car. After Buenaventura was seated in the backseat, he started kicking at the officers. While riding to jail, Buenaventura refused to answer questions. Even at the jail, Buenaventura remained unwilling to answer questions and refused to cooperate with the officer's search.

The state charged Buenaventura with several counts, two of which were dismissed. His case proceeded to a jury trial, resulting in an acquittal for the alleged disorderly conduct at the neighbor's house and a guilty verdict for obstruction of legal process. The district court sentenced Buenaventura to 90 days in jail, staying execution for one year. Buenaventura challenged his conviction in a postconviction relief motion, which the district court denied. This appeal follows.

D E C I S I O N

Buenaventura challenges the sufficiency of the evidence to support his conviction of obstruction of legal process. "We review the record to determine whether the evidence, taken in the light most favorable to the verdict, is sufficient for a guilty verdict." *State v. Shimota*, 875 N.W.2d 363, 372 (Minn. App. 2016), *review denied* (Minn. Apr. 27, 2016). In doing so, we "assume that the jury believed the state's witnesses and disbelieved any contrary evidence." *Id.* We "will not overturn a guilty verdict if, giving due regard to the presumption of innocence and the prosecution's burden of proving guilt beyond a

reasonable doubt, the jury could reasonably have found the defendant guilty of the charged offense.” *State v. Hurd*, 819 N.W.2d 591, 598 (Minn. 2012) (quotation omitted). Buenaventura also challenges the correct interpretation of the obstruction statute, Minn. Stat. § 609.50, subd. 1(2), which is a legal determination subject to de novo review. *See State v. Pederson*, 840 N.W.2d 433, 436 (Minn. App. 2013). We construe a statute according to its plain language. *State v. Colvin*, 645 N.W.2d 449, 452 (Minn. 2002).

Minnesota Statutes section 609.50, subdivision 1(2), provides that whoever intentionally “obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties” commits obstruction of legal process. Minn. Stat. § 609.50, subd. 1(2). Buenaventura challenges whether the officers’ conduct was within their official duties, as well as whether his own conduct was sufficient to amount to obstruction.

First, we determine whether the officers were performing an official duty. In Fourth Amendment caselaw, it is well-established that an officer performs official duties when he conducts “a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.” *State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016) (quoting *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008)). In fact, official duties include nearly all of a police officer’s enforcement duties, even those that are discretionary. *Shimota*, 875 N.W.2d at 372; *see State v. Litzau*, 893 N.W.2d 405, 408 (Minn. App. 2017) (holding that official duties include discretionary arrests and affirming conviction for obstruction).

Here, police officers were dispatched to investigate a 911 call reporting disorderly conduct by Buenaventura. By investigating the 911 call, the officers performed an official duty. After locating and pursuing Buenaventura, the officers executed a discretionary arrest. We conclude that the officers were performing official duties.

Next, we determine whether Buenaventura's conduct constitutes obstruction. The state was required to prove that the defendant violated the statute by "obstructing, resisting, or interfering with one's own arrest . . . [w]hen an officer is effectuating [that] arrest." *Litzau*, 893 N.W.2d at 409. Obstruction includes "conduct such as hiding from, evading, or avoiding a police officer," but does not include conduct that is merely fleeing a police officer. *State v. Morin*, 736 N.W.2d 691, 697 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007). Assaultive conduct is not required.

Once under arrest, the officers struggled to place Buenaventura in handcuffs, search his pockets, and place him in the backseat of the squad car. Buenaventura was ordered twice to sit inside the squad car, but he refused. Buenaventura struggled to get away and, once seated on the backseat, he kicked at the officers. An officer again "ordered him to stop kicking, pushed his feet past the door frame and closed the door." While riding to the jail, Buenaventura made several comments to the officers about the encounter with the neighbor but "was unwilling to answer questions or physically cooperate with the [officer's] search." Buenaventura was never booked in the jail because the officer was "unable to complete the booking process."

Buenaventura argues that he resisted the officers to defend himself against an illegal arrest, which constitutes an unjustified bodily attack. "It is well settled that a defendant

cannot prevail on an evidence-insufficiency argument by challenging [his] conviction based on [his] claim that [he] was resisting only an *illegal* arrest.” *Shimota*, 875 N.W.2d at 372-73 (emphasis in original). Resisting an unjustified bodily attack differs from resisting an unlawful arrest. *See State v. Wick*, 331 N.W.2d 769, 771 (Minn. 1983) (affirming conviction for obstruction where appellant claimed that arrest was unlawful). Although a person “would have a right to resist . . . against unjustified bodily attack” as a means of self-defense, a person does not have the right to resist an arrest that violates his Fourth Amendment rights. *Id.*; *see also City of St. Louis Park v. Berg*, 433 N.W.2d 87, 91 (Minn. 1988) (stating that although a defendant may “offer evidence that his forceful response to the illegal arrest was in self-defense,” there is no “additional constitutional right to resist an illegal arrest”). Thus, the state did not need to prove that the arrest was legal because Buenaventura did not have the right to resist the arrest, lawful or otherwise.

Finally, we conclude that the record includes sufficient evidence that Buenaventura obstructed the arrest. Buenaventura resisted being placed in handcuffs and struggled against the officers’ efforts to seat him in the squad car. He kicked at the officers, demanded to be released, and refused to answer questions or cooperate with the booking officer at the jail. Viewing the evidence in the light most favorable to the jury’s guilty verdict, we conclude that the record is sufficient to support Buenaventura’s conviction of obstruction of legal process.

Affirmed.