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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0892**

State of Minnesota,
Respondent,

vs.

Elisa Marie Wier,
Appellant.

**Filed May 7, 2018
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CR-16-29155

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

Susan L. Segal, Minneapolis City Attorney, Heather P. Robertson, Assistant City Attorney,
Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Reyes, Judge; and Stauber,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

REYES, Judge

Appellant challenges her conviction of misdemeanor obstructing legal process without force in violation of Minn. Stat. § 609.50, subd. 1(2) (2016), arguing that the evidence was insufficient to convict her because the state failed to prove beyond a reasonable doubt that she did not act in self-defense against the use of force by police officers. We affirm.

FACTS

On November 1, 2016, appellant Elisa Marie Wier called 911 and stated that she wanted a male removed from her home, against whom she had an order for protection. Appellant could be heard yelling and screaming at a male in the background, and she hung up on the operator. Appellant called the operator again, but did not answer the operator's questions and continued yelling at the male.

Officers Reed and Brazeau of the Minneapolis Police Department responded to appellant's call and went to her apartment in Minneapolis. As the officers approached appellant's apartment unit, they observed clothing and other belongings outside of appellant's door and heard yelling coming from inside the unit.

The officers stood outside the apartment door for a few minutes to hear what was going on before they entered. Appellant yelled at a man later identified as J.A., her then-boyfriend and the father of her child. J.A. spoke loudly, but did not yell as loud as appellant. Appellant yelled that J.A. wanted her to go to jail and that if the police put handcuffs on her, she was going to die because she was going to "go off" and they would

shoot her. The officers heard a slapping sound after that but did not know who had been slapped because the door to the apartment was still closed.

Officer Brazeau knocked on the door and identified himself as a police officer. Appellant answered the door approximately one minute later. She held her three-month old baby and was covered in sweat. Appellant told the officers that everything was fine, that she was the person who called 911, and that she no longer needed their assistance. She told the officers that no one else was inside the apartment and that she had been arguing with someone on the phone. Officer Reed then drew his pistol, pushed past appellant and her child, and entered the apartment. Appellant screamed. Officer Brazeau grabbed her by the arm, pulled her into the hallway, and instructed her to sit down. He then followed Officer Reed into the apartment, and both officers inspected the apartment to “clear” it.

Officer Reed found J.A. sitting in the bathroom and handcuffed him. As he spoke to J.A., Officer Reed noticed that J.A. had a swollen left cheek, which was cut and bleeding. At the same time, Officer Brazeau spoke with appellant in the hallway. He asked her for her name and why she had taken so long to open the door. Appellant did not answer any of his questions. She was agitated, yelled and swore at him, and told him that he liked killing people and to shut the f-ck up. Officer Brazeau told her that he did not care about what happened to her and threatened to have her child placed with child-protective services. He told her to sit on the floor in the hallway and went inside the apartment to speak to J.A.

Officer Brazeau observed the injury on J.A.’s face and initiated appellant’s arrest, which was consistent with the Minneapolis Police Department’s policy in suspected

domestic-abuse cases. Officer Brazeau observed appellant standing in the hallway, despite his instruction to sit on the hallway floor. He told appellant twice that she was under arrest. She was holding her child in her left arm and her cell phone in her right hand. Officer Brazeau told appellant to put the child down and not to resist arrest because he could not handcuff her while she held her child. Officer Brazeau grabbed appellant's arm, and she tried to pull away from him. She was again instructed to release the child but did not comply. Appellant said, "No, don't do this" as the officers tried to handcuff her.

Officer Brazeau then effectuated a joint manipulation technique on appellant's right arm called an "escort hold." Officer Reed exited the apartment into the hallway, grabbed appellant's left arm, which was holding on to her child, and told her that she would be charged with child endangerment if she did not let go of her child. Appellant laid on the ground and continued to resist. She held her child to her chest, and yelled for J.A. to take the child.

After J.A. removed the child from appellant's arms, the officers executed a controlled takedown, dragged her up to her knees by her arms, and grabbed her by her hair on the back of her head. They pushed appellant to the ground, where she laid on her stomach with her arms spread out in front of her. Officer Brazeau attempted to place appellant in an unconscious neck restraint, the proper execution of which restricts the blood flow to the brain and renders the person unconscious. He put his left arm around appellant's neck while his right arm pushed her head into the bend of his left elbow, but failed to properly execute the restraint because appellant was covered in sweat. The

officers' body cam footage shows appellant twice saying that she could not breathe, tapping her right hand on the ground as she said this.

At this point, Officer Brazeau was kneeling on appellant's lower back and Officer Reed was kneeling on appellant's buttocks. Officer Brazeau then punched appellant in the back of the head three times—a technique called “stunning strikes.” Officer Reed got off appellant, moved in front of her, and maced her in the face. Officer Brazeau also got off her and delivered two “stunning strikes” to her torso. He then handcuffed and arrested appellant. The physical altercation occurred in less than three minutes.

On November 9, 2016, respondent State of Minnesota charged appellant with obstructing legal process with force in violation of Minn. Stat. § 609.50, subds. 1(2), 2(2) (2016), domestic assault—inflicting bodily harm in violation of Minn. Stat. § 609.2242, subd. 1(2) (2016), domestic assault—intent to cause fear of immediate bodily harm in violation of Minn. Stat. § 609.2242, subd. 1(1), and disorderly conduct in violation of Minn. Stat. § 609.72, subd. 1(3) (2016).

During appellant's jury trial, and after the close of the state's case-in-chief, appellant moved for, and the district court granted, judgment of acquittal on the two domestic-assault charges involving J.A. After appellant presented her defense, the jury returned verdicts of not guilty for obstructing legal process with force and disorderly conduct, but found appellant guilty of the lesser-included misdemeanor of obstructing legal process without force in violation of Minn. Stat. § 609.50, subd. 1(2). The district court sentenced appellant to 20 days imprisonment, stayed her sentence for six months, and imposed a \$50 fine. This appeal follows.

DECISION

Appellant does not dispute that the state proved beyond a reasonable doubt that she actually obstructed legal process without force. Appellant instead argues that the evidence was insufficient to convict her because the state failed to prove beyond a reasonable doubt that she did not act in self-defense because the officers used excessive force to effectuate her arrest. We disagree because the state set forth sufficient evidence that appellant did not act in self-defense.¹

To resolve this issue, 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). We “assume that the jury believed the state’s witnesses and disbelieved any contrary evidence[,]” *id.*, and 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).

In *State v. Wick*, the supreme court held that Minnesota law does not recognize a defendant’s right to resist an unlawful arrest or search, but that a defendant does “have a right to resist an officer in order to defend himself or another against unjustified bodily

¹ We do not analyze whether the level of force used by the officers was excessive because our conclusion that the state produced sufficient evidence that appellant did not act in self-defense is dispositive. See *Lipka v. Minn. Sch. Emps. Ass’n, Local 1980*, 550 N.W.2d 618, 622 (Minn. 1996) (stating that “judicial restraint binds us to refrain from deciding any issue not essential to the disposition of the particular controversy before us”).

attack.” 331 N.W.2d 769, 771 (Minn. 1983). The supreme court has since referred to the Wick defense as “self-defense.” *City of St. Louis Park v. Berg*, 433 N.W.2d 87, 91 (Minn. 1988). Implicit in a claim of self-defense is that the defendant was not the first aggressor. *State v. Edwards*, 717 N.W.2d 405, 410-11 (Minn. 2006).

Here, the evidence indicates that appellant was the initial aggressor. The officers testified that they heard appellant tell J.A. that if the police cuffed her, she would “go off” and that the officers would shoot and kill her. Officer Brazeau testified that he believed appellant was referencing “suicide by cop,” wherein a person purposely provokes police to shoot him or her through acts of aggression toward the police. Also, when Officer Brazeau told appellant several times that she was under arrest, she would not let go of her child and struggled with the officers as they tried to arrest and cuff her. The state presented this evidence to the jury through officer testimony and the officers’ body cams that were admitted into evidence.

Because we review the record in the light most favorable to the verdict, we conclude that the jury could have reasonably found that appellant did not act in self-defense in resisting arrest and that the state produced sufficient evidence to support the jury’s verdict.

Affirmed.