IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 20-0508

STATE OF MONTANA,

Plaintiff and Appellee,

v.

ANGELA DAWN BENNETT,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Fourth Judicial District Court,
Missoula County, The Honorable Shane Vannatta, Presiding

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

OTHER AUTHORITIES

STATEMENT OF THE ISSUE

Whether the municipal court erred when it denied Appellant's motion to dismiss for insufficient evidence to convict her of the charge of obstructing a peace officer.

STATEMENT OF THE CASE

On June 27, 2019, Missoula Police Department (MPD) Officer Shaun Loya (Officer Loya) was dispatched to the Poverello Center to respond to a complaint that Appellant, Angela Dawn Bennett (Bennett), had violated an order of protection obtained by Tina Donovan (Donovan). (D.C. Doc. 14 at 2; 2/28/20 Missoula Municipal Court Bench Trial Recording (Tr.) at 01:34-02:03.) Bennett walked away from Officer Loya when he attempted to talk to her. He arrested her and cited her with obstructing a police officer, in violation of Mont. Code Ann. § 45-7-302, and an order of protection violation, contrary to Mont. Code Ann. § 45-5-626. (D.C. Doc. 9, *available at* Appellant's App. A; Tr. at 10:12-10:35.)

On February 28, 2020, the Missoula Municipal Court conducted a bench trial. (*see* D.C. Doc. 14 at 2; Tr. at 00:00-37:14.) Officer Loya was the only witness. *Id.* At the close of testimony, the State moved to dismiss the order of protection violation charge, which the court granted. (D.C. Doc. 18 at 94-95, *available at* Appellant's Apps. D and F; Tr. at 20:45-20:47.) Bennett then

presented the court with a written motion to dismiss for insufficient evidence in open court. (D.C. Doc. 14 at 3; Tr. at 21:05-21:11.) The State objected on the grounds that it was untimely, improper, and lacked merit. (D.C. Doc. 14 at 3-4; Tr. at 21:20-21:48.)

The court allowed Bennett to make her motion orally. (Tr. at 22:30-29:36.) Bennett chose to read the motion verbatim into the record. (Tr. at 22:42-29:14.) The municipal court denied Bennett's motion. (Tr. at 29:15-29:18.) The court then found Bennett guilty of obstructing a peace officer. (Tr. at 31:50-31:54.)

Bennett appealed to the district court. (D.C. Doc. 3.) The State responded and Bennett replied. (D.C. Docs. 7-9 and 10-12.) The district court affirmed the municipal court's denial of Bennett's motion to dismiss for insufficient evidence and Bennett's conviction. (D.C. Doc. 14.)

STATEMENT OF THE FACTS[1]

The basic facts of this case are not in dispute. On June 27, 2019, Officer Loya was dispatched to the Poverello Center (the Poverello) in response to a report that Bennett had violated an order of protection. (D.C. Doc. 14 at 2; Tr. at 01:34-02:03.)

[1] The State relies on both the trial recording (Tr.) and the district court's order (D.C. Doc. 14) for its factual basis, as Bennett concedes in her district court appellate brief, "The facts in this case are simply [sic] and not in dispute . . . the only real dispute is whether—as a matter of law—Ms. Bennett's conduct constitutes obstructing a peace officer."

En route to the Poverello, Officer Loya confirmed with dispatch that Bennett had been served with the order of protection requiring her to stay away from Donovan. (Tr. at 02:00-02:10.) At trial, Officer Loya testified that he parked his patrol car on the other side of the Poverello. (Tr. at 15:53-16:05.) Officer Loya's body camera footage shows his patrol car stopped in the driving lane of the street near an entrance to the Poverello, with the engine running and headlights on. (6/27/19 Officer Loya's body camera Watchguard video (Watchguard video) *admitted* at Tr. 02:56-04:49.)

Once inside the Poverello, Officer Loya spoke with Poverello staff, who said "they were aware of the incident and that [Bennett] was making a scene . . . but that she was no longer in the Poverello but she was across the street." (D.C. Doc. 7 at 2-3; Tr. at 2:10-2:27; Watchguard video at 00:00-00:37.) Officer Loya also spoke with Donovan, who told him that she had an order of protection against Bennett and that Bennett had violated it by walking by her in the Poverello. (Watchguard video at 00:00-00:20.) Donovan was afraid Bennett was going to kill her and because of that she did not feel safe and wanted to leave the Poverello. (Tr. 07:00-07:10; Watchguard video at 00:29-00:32, 01:40-01:44.)

Officer Loya walked out of the Poverello and crossed the street to find Bennett. (D.C. Doc. 14 at 2; Tr. at 08:20-08:26; Watchguard video at 02:35-02:55.) Officer Loya was familiar with Bennett from multiple interactions with her during

his six years with MPD, so he recognized her "by sight." (Tr. at 8:29-8:36.) Officer Loya testified that when he saw Bennett, he "began to do an investigation on the complaint . . . ." (Tr. at 08:46-08:52.) Officer Loya called out Bennett's name as he walked toward her group. (D.C. Doc. 14 at 2; Watchguard video 02:54-02:55.) One of the two individuals standing with Bennett asked Officer Loya if he needed them, to which he replied "no" and that "they were good." (D.C. Doc. 14 at 3; Tr. at 20:02-20:08; Watchguard video at 03:01-03:04.)

At trial, Officer Loya testified that Bennett was jittery and began packing up her things right away as he attempted to ask her clarifying questions and continue his investigation. (D.C. Doc. 14 at 3; Tr. at 8:57-9:01.) Officer Loya believed that he had probable cause to arrest her for the order of protection violation at the time he approached her. (Tr. at 10:12-10:24.) He also testified that he made it very clear that he was conducting an official investigation. (Tr. at 10:50-11:00.)

As Officer Loya spoke with Bennett, two other uniformed police officers quickly approached Bennett and stopped just a few feet in front of her. (Watchguard video at 03:04-03:29[2].) The events were captured on Officer Loya's body camera:

[2] Officer Nathan Champa is visible at approximately this point in the video. He walks toward Bennett with Officer Loya. Officer Jenna Volinkaty follows a few steps behind him.

Officer Loya:	Angela, how are you . . . how are you today . . . Angela, talk to me, before you eat, talk to me, okay.
Bennett:	Talk to you about what?
Officer Loya:	Well, I got to talk to you about something that someone reported to me, okay.
Bennett:	About what?
Officer Loya:	Well, inside the Poverello.
Bennett:	I have not been in that Poverello for three years.
Officer Loya:	For three years, okay.
Bennett:	So I don't know what the fuck you're talking about . . . three fucking years . . . c'mon.
Officer Loya:	So, Angela, anything else you want to tell me?
Bennett:	Man you people are dumb.
Officer Loya:	Okay. Nope. Let's go. Drop your food.

(Watchguard video at 02:55-03:35; *played during trial*, Tr. at 13:30-14:12.)

Officer Loya then placed Bennett in handcuffs with the assistance of the other two officers. (Watchguard video 03:30-04:10.) The three officers walked Bennett the short distance to where Officer Champa's and Officer Volinkaty's patrol car was parked. (Watchguard video at 04:10-04:43.) The officers placed Bennett in the patrol car belonging to Officer Champa and Officer Volinkaty. (Watchguard video at 05:28-05:46.) Officer Loya cited Bennett with obstructing a

peace officer and violation of an order of protection. (D.C. Doc. 14 at 2; Def. Ex. 2 *available* at Appellant's App. A.)

SUMMARY OF THE ARGUMENT

The municipal court correctly denied Bennett's motion to dismiss for insufficient evidence to convict Bennett of obstructing a peace officer. The State established the essential elements of the offense pursuant to Mont. Code Ann. § 45-7-302(1). Seizure is not an element of obstructing a peace officer. Thus, Bennett's argument—that walking away was not obstruction because she was not seized—must fail. Both a plain reading of Mont. Code Ann. § 45-7-302(1) and this Court's prior analyses show that a person can engage in conduct that constitutes obstructing a peace officer regardless of whether they are seized and even when that person is not the subject of the officer's investigation.

Bennett also advances a faulty definition of "voluntary act" to propose an incorrect standard for her mental state. The standard is that, objectively, Bennett knew that it was highly probable that her conduct interfered with Officer Loya's investigation. The evidence shows that Loya was clearly in the midst of conducting his official duties as a police officer.

Finally, the municipal court correctly denied Bennett's motion to dismiss, as it was for insufficient evidence in title only. Bennett's motion raised a legal issue,

not a challenge to the sufficiency of the evidence. This Court should affirm the municipal court's denial of Bennett's motion and affirm her conviction.

ARGUMENT

I. Standard of review

We review the denial of a motion to dismiss for insufficient evidence de novo. *State v. Kirn*, 2012 MT 69, ¶ 8, 364 Mont. 356, 274 P.3d 746. "We review a question on the sufficiency of the evidence to determine whether, after reviewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Eisenzimer*, 2014 MT 208, ¶ 5, 376 Mont. 157, 330 P.3d 1166 (citing *State v. Booth*, 2012 MT 40, ¶ 7, 364 Mont. 190, 272 P.3d 89).

On appeal from a municipal court of record to a district court, the district court's role is that of an intermediate appellate court. *City of Billings v. Rodriguez*, 2020 MT 9, ¶ 6, 398 Mont. 341, 456 P.3d 570. This Court "review[s] the district court's decision in such an appeal as if the appeal was originally filed in this Court, applying the appropriate standard of review." *City of Great Falls v. Allderdice*, 2017 MT 58, ¶ 7, 387 Mont. 47, 390 P.3d 954.

II. The municipal court correctly found Bennett guilty of obstructing an officer because, viewed in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

Pursuant to Mont. Code Ann. § 45-7-302(1), a "person commits the offense of obstructing a peace officer . . . if the person knowingly obstructs, impairs, or hinders the enforcement of the criminal law, the preservation of the peace, or the performance of a governmental function . . . ." In interpreting the statutory definition of "knowingly," this Court has held that "an individual obstructing a peace officer must engage in conduct under circumstances that make him or her aware that it is highly probable that such conduct will impede the performance of a peace officer's lawful duty." *Eisenzimer*, ¶ 7 (citing *City of Kalispell v. Cameron*, 2002 MT 78, ¶ 11, 309 Mont. 248, 46 P.3d 46 (interpreting the statutory definition of "knowingly" under Mont. Code Ann. § 45-2-101(35), in the context of Mont. Code Ann. § 45-7-302(1))). This Court has "previously acknowledged that, for the purposes of instructing the jury on a charge of obstructing a peace officer, the results-based 'knowingly' instruction should be given." *State v. Secrease*, 2021 MT 212, ¶ 12, ___ Mont. ___, 493 P.3d 335. *See State v. Johnston*, 2010 MT 152, ¶ ¶ 12, 14, 357 Mont. 46, 237 P.3d 70; *see also City of Kalispell v. Cameron*, 2002 MT 78, ¶ 11, 309 Mont. 248, 46 P.3d 46 (noting that to convict a defendant of obstructing a peace officer, the defendant must be "aware that his conduct would hinder the execution of the Officers' duties").

A. The State did not have to establish that Officer Loya seized Bennett to prove that she committed obstruction because seizure is not an element of the offense under Mont. Code Ann. § 45-7-302(1).

Bennett's argument incorrectly adds an element—seizure—to the offense of obstructing a peace officer. (*See* Appellant's Br. at 12.) However, "[i]n the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." Mont. Code Ann. § 1-2-101. This Court "interpret[s] a statute first by looking to its plain language." *Mont. Sports Shooting Ass'n v. State*, 2008 MT 190, ¶ 11, 344 Mont. 1, 185 P.3d 1003 (citing *State v. Letasky*, 2007 MT 51, ¶ 11, 336 Mont. 178, 152 P.3d 692). Further, this Court "will not interpret the statute further if the language is clear and unambiguous." *Mont. Sports Shooting Ass'n*, ¶ 11. The municipal court correctly found that sufficient evidence established the essential elements of the offense beyond a reasonable doubt.

In *Eisenzimer*, ¶ 12, this Court affirmed a conviction for obstructing a peace officer that involved a defendant who was not seized and not even part of the officer's investigation. The defendant (Eisenzimer) approached an officer who was "obviously in the middle of a traffic stop" to ask the officer repeatedly for a ride home." *Id.*, ¶ 11. The officer "was only able to complete his traffic stop when he arrested Eisenzimer . . . [because his] attention to the performance of his

duties—i.e., the traffic stop—was diverted by responding to Eisenzimer's repeated requests for a ride." *Id.* This Court found "ample evidence" presented in Eisenzimer's case from which a rational trier of fact could have found the essential elements of obstructing a peace officer beyond a reasonable doubt." *Id.* Seizure is not one of those elements.

Officer Loya did not need to advise Bennett he was detaining her for the municipal court to conclude that Bennett knowingly hindered the investigation. The facts of *Eisenzimer* illustrate that a person can knowingly engage in conduct that obstructs an officer's lawful duties while that person is not seized during a voluntary interaction with an officer. Neither the plain language of Mont. Code Ann. § 45-7-302(1) nor this Court's analysis in *Eisenzimer* support the conclusion that seizure is an element of the offense. Bennett's argument fails to show that the municipal court erred when it dismissed her motion to dismiss for insufficient evidence.

B. The municipal court correctly determined that Bennett knowingly obstructed Officer Loya's lawful duties.

Bennett misinterprets the definition of "voluntary act," set forth in Mont. Code Ann. § 45-2-202, to assert an invalid mental state requirement for obstructing a peace officer. Bennett argues that because she had no legal duty to remain on scene, her failure to do so is not a requisite voluntary act for any criminal conviction. (Appellant's Br. at 17-18.) However, this Court has explained that

"[t]his code provision [defining voluntary act] expresses the common law principle [previously discussed] that every crime must consist of an act and a criminal intent." *State v. Korell*, 213 Mont. 316, 336, 690 P.2d 992, 1003 (1984).

The statutory definition of "involuntary act" further exposes Bennett's faulty interpretation of the requisite mental state. An "involuntary act" means an act that is: (a) a reflex or convulsion; (b) a bodily movement during unconsciousness or sleep; (c) conduct during hypnosis or resulting from hypnotic suggestion; or (d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual. Mont. Code Ann. § 45-2-101(33). This Court has explained that the "voluntary act" statute "was not intended to address psychological impairment . . . [but the] voluntary act requirement properly reflects physiological considerations; those who act by reflex, while sleepwalking, etc., should not be held criminally responsible. *Korrell* at 337 (citing Mont. Code Ann. § 45-2-101(31); Bender, *After Abolition: The Present State of the Insanity Defense in Montana*, 45 Mont. L. Rev. 133, 144-145 (1984); W. LaFave & A. Scott, *Criminal Law* Section 25, at 179-181 (1972).

Contrary to Bennett's position, the "voluntary act" of obstructing a peace officer is not failure to perform a duty to remain on scene and speak to the police. Instead, the State had to prove that Bennett acted knowingly; that is, she was aware of the result of her conduct. Mont. Code Ann. § 45-7-302(1); *Eisenzimer*, ¶ 7.

Bennett's subjective intent is not the issue. *See Eisenzimer*, ¶ 11. The test is whether, objectively, Bennett's conduct under the circumstances made her aware that it was highly probable such conduct would impede the performance of Officer Loya's lawful duty. Bennett violated Mont. Code Ann. § 45-7-302(1) by walking away under circumstances that, objectively, made her aware it was highly probable her conduct impeded Officer Loya's investigation.

C. Irrespective of whether Bennett was seized, there was substantial evidence to show Bennett knew Officer Loya was conducting an investigation.

The evidence presented at trial showed that Bennett had every reason to know that Officer Loya was actively investigating a crime. Officer Loya was in uniform and greeted Bennett by name as he approached her. His manner and purposeful approach prompted Bennett's companions to ask if he needed them to stay before they walked away. Officer Loya commanded Bennett to talk to him. ("Angela, talk to me, before you eat, talk to me, okay." Watchguard video at 03:04-03:09.) When Bennett asked why he needed to talk to her, Officer Loya told Bennett he was following up on a report he had received. ("Well, I got to talk to you about something that someone reported to me, okay . . . inside the Poverello." (Watchguard video at 03:09-3:16.)

As Officer Loya talked to Bennett, two more uniformed officers walked purposefully toward her and stood just a few feet in front of her. Officer Loya had parked his patrol car just outside the Poverello, conspicuously in the street (in the driving lane) with engine running and headlights on, near the site of Bennett's arrest. (Watchguard video at 02:56-04:49.) The other two officers had parked their patrol car near Officer Loya's car, perpendicularly positioned across handicapped parking spots. (*Id.* at 00:04:35-00:04:49.) The evidence shows that Officer Loya was investigating a crime and the objective standard shows that Bennett's conduct interfered with that investigation.

The facts Bennett recites are only relevant to the question of seizure, not whether Officer Loya was conducting an investigation. Officer Loya's neutral manner and tone were likely deliberate, given his familiarity with Bennett and the fact Donovan had reported to him that she was afraid Bennett was going to kill her. Bennett's immediate hostility and escalation suggest the reasons why Officer Loya approached her carefully. While Officer Loya's tone may not have been harsh, his words and the presence of three uniformed officers clearly sent the message that they were investigating a reported crime. As previously discussed, this Court need not address whether Officer Loya conducted an investigatory stop, only whether the municipal court relied on sufficient evidence showing the elements of the offense.

D. At trial, the municipal court properly considered and denied Bennett's motion to dismiss for insufficient evidence.

In a criminal trial, a motion for a directed verdict is properly referred to as a "motion to dismiss for insufficient evidence." *State v. Hill*, 2008 MT 260, ¶ 20, 345 Mont. 95, 189 P.3d 1201 (citing *State v. McWilliams*, 2008 MT 59, ¶ 36, 341 Mont. 517, 178 P.3d 121). The court should grant that motion if, "viewing the evidence in a light most favorable to the prosecution, there is no evidence upon which a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Hill*, 2008 MT 260, ¶ 20, 345 Mont. 95, 189 P.3d 1201 (citing State v. *Swann*, 2007 MT 126, ¶ 16, 337 Mont. 326, 160 P.3d 511). This Court looks to whether evidence exists to support the verdict, not whether the evidence could have supported a different result. *State v. Sheehan*, 2017 MT 185, ¶ 17, 388 Mont. 220, 399 P.3d 314.

The municipal court denied Bennett's motion to dismiss for insufficient evidence based upon the substance of her motion, not because it was offered at trial. In addition, Bennett was allowed to submit her motion orally and the court considered it. In its order, the district court explained why the municipal court correctly denied Bennett's motion at trial:

> [Pursuant to Mont. Code Ann. § 46-16-403] a motion to dismiss for insufficient evidence is timely made at trial at the close of evidence. However . . . [the] Montana Supreme Court has noted that "we look to the substance of the motion, not simply its title[.] *State v. Clary*, 2012 MT 26, ¶ 27, 364 Mont. 53, 61, 270 P.3d 88, 94. "Except for

> good cause shown, any defense, objection or request that is capable of determination without trial of the general issue must be raised at or before the omnibus hearing unless otherwise provided by Title 46." Mont. Code Ann. § 46-13-101(1).

(D.C. Doc. 14 at 6.) The district court also correctly concluded:

> The arguments raised in Bennett's motion, although framed as [a] motion [to] dismiss for insufficient evidence, are legal issues that are capable of determination without trial of the general issue and therefore needed to be made before trial."

(*Id.* at 7-8.) The municipal court properly denied Bennett's motion.

CONCLUSION

This Court should affirm the municipal court's denial of Bennett's motion to dismiss for insufficient evidence and affirm her conviction of obstructing a peace officer.

Respectfully submitted this 19th day of November, 2021.

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By: */s/ Bree Gee*
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 3,483 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ Bree Gee
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CERTIFICATE OF SERVICE

I, Bree Williamson Gee, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 11-19-2021:

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