IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 20-0367

CITY OF MISSOULA,

Plaintiff and Appellee,

v.

BRIANNE NICOLE RANA,

Defendant and Appellant.

REPLY BRIEF OF APPELLANT

On Appeal from the Missoula Municipal Court, Missoula Montana, the Honorable Ethan C. Lerman presiding

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The Defendant and Appellant, Brianne Nicole Rana, respectfully replies to the State's response as follows:

ARGUMENT

Rana argues on appeal that declining to obey a police officer's commands to make physical movements during an investigatory stop cannot on its own constitute Obstructing a Peace Officer. In order to convict a person of Obstructing a Peace Officer, the prosecution must demonstrate not just that the defendant's conduct impaired, hindered, or obstructed the officer in the performance of his duties, but that the defendant acted knowingly with respect to that result. Sections 45-7-302, 45-2-101(34), MCA. The municipal court erred when it declined to consider whether the Obstructing a Peace Officer charge was legally sufficient to go to the jury.

In response, the State raised three arguments. First, the State claims that Rana failed to raise this argument below and has accordingly waived her right to do so on appeal. Second, the State contends that the municipal court did not err in declining to entertain Rana's motion to dismiss because such motions are premature before the close of evidence at trial. Third, the State argues that the jury heard

sufficient evidence of Rana's mental state at trial to convict her of Obstruction of a Peace Officer. (State's Answer Br. at 13–14.) Each argument will be addressed in turn.

I. Rana's argument on appeal is not new and should be considered by this Court.

Rana presented two arguments to the municipal court in support of her motion to suppress and dismiss. First, that "By opening the driver side door and demanding that Brianne step out of the vehicle, Officer Harris was attempting to conduct a field sobriety test on Brianne. A field sobriety test is a search protected by both the Fourth Amendment and the Montana Constitution," which she had the right to decline. (Defendant's Opening Brief 06/04/2019, p. 3.) Second, "By refusing to consent to the search, Brianne was exercising her constitutional right to refuse a search. An individual cannot be charged with a crime for exercising this constitutional right. Since the basis of the arrest was her refusal to exit the vehicle, the arrest was unlawful. (Defendant's Opening Brief 06/04/2019, p. 4.)

On the first issue, the municipal court held that Officer Harris's request to Rana that she exit her vehicle did not constitute a search. But the municipal court explicitly declined to address the second

question presented by Rana, whether her refusal to exit her vehicle could legally constitute the offense of Obstructing a Peace Officer. (Findings of Fact, Conclusions of Law, and Order, 08/01/2019, ¶12.) On appeal to the District Court, Rana argued that she "was exercising her statutory right to refuse to perform a DUI test as well as her constitutional right to refuse a search. Exercising one's constitutional [right] cannot be the basis for a crime. Therefore, the charge of 'Obstructing a Peace Officer' must be dismissed." (Appellant's Opening Brief 12/30/2019, p. 13.)

It is simply not the case, as the State contends, that Rana "never made this argument before the municipal court" or that she "failed to raise her sufficiency argument before the district court and has now waived the issue." (State's Answer Br. at 17, 13.) This Court can and should address any issue raised by an appellant that was presented to the trial court, briefed on intermediate appeal, and not abandoned on final appeal. *Ford v. State*, 2005 MT 151, ¶ 35, 327 Mont. 378, 114 P.3d 244; *Missoula v. Asbury*, 265 Mont. 14, 20, 873 P.2d 936, 939 (1994).

II. The Municipal Court erred when it declined to consider whether the Obstructing a Peace Officer charge was legally sufficient to go to the jury.

The State contends, citing § 46-16-403, MCA, that a pretrial motion to dismiss based on insufficient evidence is premature. (State's Answer Br. at 17.) The State is correct about the appropriate timing of a motion under § 46-16-403, MCA: it should come at the close of the evidence at trial. *State v. Nichols*, 1998 MT 271, ¶ 4, 291 Mont. 367, 970 P.2d 79. But Rana did not make such a motion to the municipal court at the close of evidence, nor has she appealed the denial of such a motion to this Court. Rather, Rana raised the legal argument with respect to the mental state element of the crime that one cannot both intend to preserve one's rights and simultaneously intend to impede an officer's duties. (Defendant's Opening Brief, pp. 7–12.) The crucial issue that the trial court erroneously declined to assess *pretrial* was whether the evidence of Rana's mental state was sufficient to even be presented to the jury.

"Whether there is sufficient evidence to *raise* an issue of fact is a question of law for the court and not one of fact." *State v. German*, 2001 MT 156, ¶ 10, 306 Mont. 92, 30 P.3d 360 (emphasis added). Just as "a

trial court need not give an instruction on a lesser-included offense when there is no evidence to support it," *German*, ¶ 11, a trial court need not and should not allow a claim to be presented to a jury if the party with the burden of proof cannot legally satisfy one or more required elements, *see Federal Land Bank of Spokane v. Snider*, 247 Mont. 508, 513, 808 P.2d 475, 478–79 (1991) ("The right of jury trial on any issue of fact presented by the pleadings is provisional, and if the evidence fails to form such issue of fact, the right of jury trial disappears.") As this Court has explained before,

> The old rule that a case must go to the jury if there is a scintilla of evidence has been almost everywhere exploded. There is no object in permitting a jury to find a verdict which a court would set aside as often as found. The better and improved rule is, not to see whether there is any evidence, a scintilla, a crumb, dust on the scales, but whether there is any upon which a jury can, in any justifiable view, find for the party producing it, upon whom the burden of proof is imposed.

Snider, 247 Mont. at 514, 808 P.2d at 479.

The State misses the point when it insists that a pretrial motion to dismiss under § 46-16-403, MCA is premature. (State's Answer Br. at 17–18.) Rana properly raised a sufficiency of the evidence argument pretrial because her argument was premised on the State's *inability* to satisfy its burden of proof with respect to her mental state, not its

failure to do so. The trial court was empowered to decide this legal issue pretrial, and it erred in declining to do so. *German*, ¶ 10; *Snider*, 247 Mont. at 514, 808 P.2d at 479.

III. The Obstructing a Peace Officer charge was legally insufficient to go to the jury.

In either an abundance of caution or an attempt to muddle the issues, the State devotes a substantial portion of its brief to an argument that sufficient evidence was presented at trial to support Rana's conviction. (State's Answer Br. at 22.) The State also reminds this Court that § 45-7-302(2), MCA precludes the affirmative defense to an obstruction charge that "the peace officer was acting in an illegal manner." (State's Answer Br. at 24.) But Rana is not challenging the sufficiency of the State's evidence at trial, and she did not raise an affirmative defense because "[a]n affirmative defense is one that admits the doing of the act charged, but seeks to justify, excuse or mitigate it." *State v. Nicholls*, 200 Mont. 144, 150, 649 P.2d 1346, 1350 (1982). Rana's argument all along was that she did not commit the crime of Obstructing a Peace Officer because she did not intend to obstruct, hinder or impair Officer Harris in the performance of his job. When she declined to exit her truck, her intent was to safeguard her rights to

privacy and against unreasonable searches and seizures and against self-incrimination. Whether Rana was correct or mistaken in her belief that she has constitutional rights that protected her from being commanded to physically exit her vehicle is irrelevant. The crucial issue that the trial court erroneously declined to address was whether the evidence of Rana's mental state was sufficient to proceed to the jury. *German*, ¶ 11. It was not.

Officer Harris had the authority to demand information specifically mentioned in statutes such as § 46-5-401(2)(a), MCA (driver's license, vehicle registration, proof of insurance). He also had the authority to ask questions, investigate, detain and ultimately arrest Rana, provided that probable cause was present. *City of Missoula v. Kroschel*, 2018 MT 142, ¶ 13, 391 Mont. 457, 419 P.3d 1208. He did not have the authority to command her to exit her vehicle.

The United States Constitution permits law enforcement officers to order persons to exit their vehicles, insofar as it is necessary for officer and traffic safety. *Pennsylvania v. Mimms*, 434 U.S. 106 (1977). But the permissibility of that rule was grounded in balancing the need for officer and traffic safety, and in the words of Court, a *de minimis*

intrusion into the inhabitants of the vehicle who are asked to exit. *Mimms*, 434 U.S. at 110–11. This Court has limited the application of the *Mimms* rule by requiring the officer's order to vacate the vehicle be actually predicated on officer or traffic safety. *State v. Roy*, 2013 MT 51, ¶ 13, 369 Mont. 173, 296 P.3d 1169.

Officer Harris did not ask Rana to exit the vehicle for officer safety reasons but rather to facilitate his DUI investigation. He told her, "Brianne, you've been drinking tonight and I need to make sure you are safe to drive. [. . .] I know you've been drinking tonight; you drinking doesn't necessarily mean that you are unsafe to drive; all I want to do is make sure that you haven't had too much to drink tonight." (DVR-61, 2:15:27 – 2:15:33; 2:16:35 – 2:16:44.) When she declined to exit her vehicle, Rana's intent was to protect her constitutional rights. Even if she was mistaken in her knowledge of the rights she had or misunderstood the extent of Officer Harris's power to submit her to his physical commands, she never acted with the intent to hinder him from doing his job. The mental state requirement of the obstruction statute—"knowingly"—protects against scenarios such as these. Invoking one's constitutional rights, even if done imperfectly, mistakenly or ignorantly

cannot be the basis of this crime. The trial court erred when it allowed the jury to decide this legal issue. *State v. Burns*, 2011 MT 167, ¶ 17, 361 Mont. 191, 256 P.3d 944 (A ruling on a motion to dismiss in a criminal proceeding is a question of law.); *German*, ¶ 10 ("Whether there is sufficient evidence to *raise* an issue of fact is a question of law for the court and not one of fact.").

CONCLUSION

The Municipal Court erred when it refused to analyze whether Rana's actions suggested a mental state consistent with this Court's analysis of the crime of Obstructing a Peace Officer. Ultimately, the evidence was insufficient to be presented to a jury. For the above reasons, Appellant respectfully requests that the Municipal Court order denying her motion to dismiss be reversed, and this case remanded with instructions to enter a judgment acquitting Rana of the Obstructing a Peace Officer charge.

Respectfully submitted this 6th day of May, 2022.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionally-spaced roman text, Century Schoolbook, and a typeface of 14 points, and is double-spaced except for footnotes and quoted, indented material. This brief contains 1,923 words, as calculated by Microsoft Word for Windows, excluding the Cover, Table of Contents, Table of Authorities, Certificate of Compliance, Certificate of Service, and Appendix.

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I hereby certify that I caused a true and accurate copy of the foregoing Reply Brief to be mailed or electronically served to:

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