UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0294

September Term, 2016

KYLE WAYNE FISHER

v.

STATE OF MARYLAND

Graeff,
Kehoe,
Davis, Arrie W.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Davis, J.

Filed: November 21, 2016

Appellant, Kyle Wayne Fisher, was tried and convicted by a jury in the Circuit Court for Charles County (Simpson, Jr. J.) of obstructing or hindering a police officer and obstruction of justice, pursuant to the Criminal Law Article § 9–306. Appellant was sentenced to eighteen months under the jurisdiction of the Commissioner of Correction, with all but thirty days suspended on Count One, obstructing or hindering a police officer, and to a concurrent sentence of eighteen months, all of which was suspended, on Count Two, obstruction of justice. Appellant was placed on unsupervised probation for a period of three years. Appellant filed the instant appeal from these convictions and sentences, presenting the following question for our review:

Is the evidence legally insufficient to sustain appellant's convictions?

FACTS AND LEGAL PROCEEDINGS

Pfc. Kaitlin Goddard of the Charles County Sheriff's Office testified, on behalf of the State, that she was assigned to the warrant squad in April 2015. She attempted to serve warrants on Brandy Sue Harper-Smith for child support, driving under the influence of alcohol, theft, forgery and issuing bad checks. On April 6, 2015, Pfc. Goddard went to appellant's home at 17151 Russell Drive on Cobb Island in Charles County. Appellant answered the door, but he refused to give permission for law enforcement officers to enter. He told the officers that "Ms. Harper-Smith was not there, that he didn't know where she was and that he thought she was in rehab." Pfc. Goddard advised him about the outstanding warrants.

Officer Robert D. Snyder of the Charles County Sheriff’s Office testified that, on April 12, 2015, he went to Appellant's house on Cobb Island, with the intent to serve the

warrants on Harper-Smith. Appellant answered the door and said that "he didn't know where she was . . . that she was not there." Officer Snyder asked if he could come inside to search, but appellant told him no. Officer Snyder did not see Harper-Smith on that date.

On April 24, 2015, after obtaining a search warrant for the residence, the officers returned to appellant's home. Officer Snyder testified as to what transpired:

> I stood outside the front door while the members of the Warrant Squad knocked on the door and made contact with Mr. Fisher. He answered the door. They explained to him that they [came] with a search warrant, and they were coming in to look for her in the house. I stayed outside with Mr. Fisher while they searched the house and located Brandy Sue Harper-Smith in the residence.

Officer Steven Davis, also a member of the Charles County Sheriff's Office**,** who took part in the search on April 24, 2015, testified that, when he spoke to appellant and asked him where his girlfriend was, appellant stated, "I told you motherfuckers that she doesn't stay here." Within two minutes, Harper-Smith was located, hiding in a bedroom closet. Appellant was arrested for harboring a fugitive.

Pursuant to Maryland Rule 4–324, appellant's counsel made a motion for judgment of acquittal at the end of the State's case and again at the close of all the evidence. The trial court denied the motions.

STANDARD OF REVIEW

This Court, in determining the sufficiency of the evidence to sustain a conviction, reviews "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Taylor v. State,* 346 Md. 452, 457 (1997) (quoting *Jackson v. Virginia,*

443 U.S. 307, 319 (1979)). We will consider the evidence in the light most favorable to the prosecution. *Moye v. State,* 369 Md. 2, 12 (2002). Although a conviction can rest on circumstantial evidence alone, a conviction "cannot be sustained on proof amounting only to strong suspicion or mere probability." *Taylor v. State,* 346 Md. at 458. A conviction, however, may rest exclusively upon the testimony of an eyewitness. *Branch v. State*, 305 Md. 177, 183–84 (1986).

DISCUSSION

Count One

Appellant contends that, despite his denial that Harper-Smith was inside the home, the law enforcement officers were not actually hindered because they knew she was inside and they found her there within minutes after their entry.

The State responds that there was sufficient evidence to allow a rational trier of fact to conclude that appellant actually obstructed or hindered the police for several weeks in serving outstanding warrants on Harper-Smith.

Obstructing or hindering a police officer in the performance of his duty, a common law offense, is comprised of the following four elements:

(1) A police officer engaged in the performance of a duty;

(2) An act, or perhaps an omission, by the accused which obstructs or hinders the officer in the performance of that duty;

(3) Knowledge by the accused of facts comprising element (1); and

(4) Intent to obstruct or hinder the officer by the act or omission constituting element (2).

Titus v. State, 423 Md. 548, 558-59 (2011).

> The third element of the offense of obstructing and hindering is knowledge by the accused that he or she is being confronted by an officer in the performance of a duty. In proving this element, '[m]ere knowledge that the person allegedly hindered was a police officer does not suffice; there also must be knowledge that the officer was engaged in performing police duties when hindered.'

Id. at 563.

> Regarding the intent requirement of the fourth element,
>
> this Court [has] relied on the established legal principle that 'unless there is evidence presented to the contrary, the law presumes that a person intends the natural and probable consequences of his acts.' We further held that in analyzing the intent element in the offense of obstructing and hindering, such an intent 'may be inferred from the defendant's voluntary and knowing commission of an act which is forbidden by law.'

Id. at 564 (citing *Attorney Grievance Comm'n v. Sheinbein*, 372 Md. 224, 245, 247 (2002).

In *In re Antoine H.,* 319 Md. 106 (1990), police officers executing a warrant for the arrest of Joseph Howard, were refused entrance into his residence for 15 minutes and, after admittance, were informed by Antoine H. that Howard was not there. The police then searched the house and found Howard hiding in the cellar. *Id.* at 106–07. The Court characterized the following facts as supporting the State's theory that Antoine H. and the other juvenile committed the offense of obstructing or hindering: "(1) the failure to open the door promptly when the police sought entrance, thereby conceivably affording Howard an opportunity to hide; (2) the lie to the police about Howard's presence on the premises; and (3) in general, the lack of cooperation with the police." *Id.* at 108. Nevertheless, the Court deemed the evidence insufficient to sustain the findings of delinquency:

> To give but one example of the deficiency, the facts recounted in the statement are not adequate to support a finding that the police were actually hindered or obstructed by P. and H. in the attempt to arrest Howard. It is clear that the denials that Howard was on the premises did not hinder or obstruct the officers in the performance of their duty. The officers did not believe the denials. *They searched the house despite the denials and found Howard. Any delay in opening the door did not, in any event, result in a failure to find and arrest him.*

Id. at 108–09 (Emphasis supplied).

Similarly, in *Nieves v. State*, 160 Md. App. 647, 657 (2004), this Court held that the police lacked probable cause to arrest the defendant for obstructing or hindering where, during a traffic stop, he initially identified himself by his middle name rather than his first name, resulting in the police having to run his information through a computer database twice before they discovered that his driver's license had been suspended. *Id.* at 656–57. On appeal, this Court concluded that any delay caused by the defendant's provision of his middle name was irrelevant as his "act did not actually cause any hindrance." *Id.* at 657. *Compare with Barrios v. State*, 118 Md. App. 384, 389 (1997), *cert. denied*, 349 Md. 234 (1998) (affirming a conviction for obstructing or hindering where the defendant's actions caused police officers to release person they were trying to arrest).

In the case *sub judice*, all four elements of the common law offense have been met. First, there were police officers performing a duty, *i.e.*, attempting to serve outstanding warrants on Harper-Smith. Second, appellant verbally denied knowledge of Harper-Smith's whereabouts and refused entry to law enforcement officers to search his residence for her. Third, appellant had knowledge that police officers were engaged in the performance of their duty. On each occasion, the officers interacted with appellant and informed him of

their purpose. Furthermore, during the second encounter, appellant articulated to the police that he knew why they were there and what duty they were performing.

Finally, the evidence is also sufficient to sustain appellant's intent to hinder or obstruct police officers. Appellant has not offered evidence that he intended a different or contrary outcome than the "natural and probable consequences" of telling law enforcement that Harper-Smith was not inside his residence. We may infer appellant's intent to obstruct or hinder law enforcement from his voluntary denial of Harper-Smith's presence, while having knowledge that this denial is an "act forbidden by law." *Titus, supra.*

Significantly, appellant's encounter with law enforcement took place over several weeks, which is in stark contrast with the facts in *Nieves*. On April 6 and April 12, police officers attempted to serve outstanding warrants upon Harper-Smith at appellant's residence. On both occasions, appellant stated he did not know her whereabouts and refused entry of police officers to search for her on the premises. On the second encounter, appellant indicated that he was aware of Harper-Smith's outstanding warrants and of the officers' intent to arrest her. Although appellant correctly avers that, on April 24th, it only took officers a couple of minutes to locate Harper-Smith, his conclusion that the police were not actually hindered or obstructed only pertains to *that day*. In actuality, the police had been attempting to serve outstanding warrants upon Harper-Smith since April 6th. Although the officers, did not believe appellant's denials, particularly on April 12th, they were, nonetheless, unable to search the premises and arrest Harper-Smith until April 24th. At that time, officers found "male and female property items" in the bedroom. Additionally,

Officer Snyder testified that he was "ninety-nine percent" certain that Harper-Smith was present at the residence on April 12. Citing his years of training and observation of appellant's body language, Officer Snyder further testified as follows: "There is no doubt in my mind with my investigation experience that she was in that house when I spoke with him due to his reactions to my questions."

This delay distinguishes the facts in the instant case from the facts in *Antoine, H., supra*, upon which appellant relies. In *Antoine H.,* officers were able to search and locate the individual they sought, with minimal delay, despite their disbelief of the accused's denials. Unlike *Antoine H.,* the delay in the instant case did result in the failure of officers to locate and arrest Harper-Smith; the officers were only able to arrest her weeks later.

Accordingly, we hold that the evidence presented is sufficient to sustain appellant's conviction of Count One, obstructing or hindering a police officer in the performance of his duty.

Count Two

Appellant also contends that several of the statutory elements of obstruction of justice have not been met and, therefore, the evidence presented is insufficient to support his conviction of Count Two. Appellant, relying upon *State v. Pagano*, 341 Md. 129, 134 (1996), argues that any obstruction in the instant case concerning a police investigation, did not impede any pending judicial proceedings. Appellant further argues that responding to inquiries by police officers regarding someone’s presence does not constitute a threat, force or corrupt means. Appellant also contends that the State has not provided evidence

of corrupt means, as required under the Statute, *i.e.*, "witness tampering, where people actually carry out malicious or deceitful acts aimed at preventing a court from carrying out its duties."

The State responds that the evidence presented is sufficient to support appellant's conviction of Count two, obstruction of justice, because appellant did engage in corrupt means, *i.e.*, "harboring a fugitive over the course of several weeks." Additionally, the State notes that there is no requirement that *actual* obstruction of justice occur in order to satisfy the statutory element. Finally, the State contends that there were pending judicial proceedings against Harper-Smith, as judges had issued child support and criminal warrants. Therefore, the State maintains, proof of the actual or attempt to obstruct or impede the "administration of justice in a court" has been established.

Md. Code Ann., Crim. Law (CL) 9–306(a) provides that "[a] person may not, by threat, force, or corrupt means, obstruct, impede, or try to obstruct or impede the administration of justice in a court of the State." Proof of obstruction of justice does not depend solely upon the perpetrator's words; rather, the accused's "intent must be judged in light of the circumstances attending his actions, including their natural and inevitable consequences." *Lee v. State*, 65 Md. App. 587, 593–94 (1985).

Although the statute does not expressly define "corrupt means," the Court of Appeals has held that

> the words of the statute are general and embrace in comprehensive terms various forms of obstruction. Thus the particular acts are not specified but, whatever they may be, if the acts be corrupt, or be threats or force, . . . [and] the due administration

> of justice in any court shall either be impeded or obstructed or be so attempted, there is an obstruction of justice.

Romans v. State, 178 Md. 588, 592 (1940).

In *Pagano*, *supra*, the Court of Appeals observed:

> Since courts administer justice through judicial proceedings, the second prong, ordinarily, prohibits only actions aimed at obstructing or impeding a *pending judicial proceeding*. Likewise, since the duties of jurors, witnesses, and court officers usually arise in relation to judicial proceedings, the first prong also, *ordinarily, requires a pending judicial proceeding*.

Id. at 134 (Emphasis supplied) (holding that a teacher who instructed her associates to lie to police officers, thus obstructing a police investigation before a judicial proceeding had been initiated, did not violate the statute).

In the instant case, when Officer Snyder attempted to serve search warrants on Harper-Smith on April 24th, appellant maintains that he told police that he didn't know where she was. According to Officer Davis, appellant stated, "I told you motherfucker's that she doesn't stay here." In support of his argument that his dissembling did not obstruct or impede the judicial process, appellant, points out that, within two minutes after appellant denied that Harper-Smith was inside the house, she was found hiding in a bedroom closet. However, citing § 9–306(a), the State notes that the statute does not require actual obstruction or impediment to the judicial process, merely attempt; *i.e.,* to "try to obstruct or impede the administration of justice in a court of the State." Taking events on April 24th into consideration, appellant did attempt to obstruct or impede police officers from serving Harper-Smith with outstanding warrants concerning, among other things, child support. Clearly, the administration of justice in a court of the State, *i.e.*, the service of warrants and

child support orders, constitute pending judicial proceedings regarding Harper-Smith. Furthermore, taking events from April 6th and April 12th into consideration, appellant *actually* obstructed or impeded police officers from serving Harper-Smith, as we discussed, *supra.*

Finally, appellant argues that the "threat, force or corrupt means" element of the statute has not been met, arguing that telling officers that Harper-Smith "doesn't stay here" does not constitute the aforementioned acts. Specifically, appellant proffers, in his appellate brief, that "corrupt means," as intended by the statute, "really pertains to things like witness tampering, where people actually carry out malicious or deceitful acts aimed at preventing a Court from carrying out its duties." We disagree with appellant's narrow definition. The Court of Appeals in *Romans, supra*, instructs that the acts, as stated in the statute, are not defined and are purposefully "general" and "comprehensive." Furthermore, the Court states that there is obstruction of justice so long as the "acts, whatever they may be" are corrupt. Black's Law Dictionary defines "corrupt conduct" as "[c]onduct that might or actually does adversely affect the honest and impartial exercise of official functions by a public official." (10th ed. 2014). Patently, not disclosing the presence of an individual knowingly sought by police for service of outstanding warrants and arrest for child support and criminal matters constitutes conduct that might or actually does adversely affect the performance of official duties of law enforcement.

Accordingly, we hold that the evidence presented is sufficient to support appellant's conviction for obstruction of justice.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.