State v. Hoffer

108 Wash.App. 1008 (2001) | Cited 0 times | Court of Appeals of Washington | September 7, 2001

Concurring: J. Dean Morgan, Carroll C. Bridgewater

UNPUBLISHED OPINION

A jury found Alan Hoffer guilty of third degree assault, contempt of court, and obstructing a law enforcement officer. On appeal, he contends that (1) he was denied his right to a speedy trial under CrR 3.3, (2) the evidence was insufficient to support a conviction for obstructing a law enforcement officer, and (3) the trial court improperly commented on the evidence by giving instructions 6 and 13. Finding that there were no violations of CrR 3.3, that sufficient evidence supported the convictions, that instructions 6 and 13 were not improper comments on the evidence, we affirm.

Facts

In the afternoon of October 14, 1998, Hoffer accompanied his girlfriend, Melissa More, to her traffic infraction hearing in Pierce County District Court in Gig Harbor. Hoffer had entered a written notice of appearance on More's behalf. When the case was called, Hoffer went forward with More, identified himself, and stated that he was More's 'counselor.'

The court determined that Hoffer was not an attorney and advised him that it was a gross misdemeanor offense to engage in the unauthorized practice of law. Hoffer replied that he had a First Amendment right to speak before the court and to defend his girlfriend. He continually and belligerently interrupted the court's colloquy with More, ignoring the court's admonishments to be quiet. The court then directed Hoffer to sit in the gallery area while More reviewed the documents from her infraction file. Hoffer did not comply and, instead, remained with More. The court warned Hoffer that he would be held in contempt if he did not go sit in the gallery area. Hoffer then left the courtroom, calling the judge a 'f{xxx}ing communist.'

Hoffer returned 10 to 15 minutes later. When the court recalled More's case and imposed a $150 fine for her traffic infraction, Hoffer became angry and again called the judge a 'f{xxx}ing communist.' He ignored the court's request to be quiet and kept talking. The court then told Hoffer he was in contempt and directed Pierce County Deputy Paul Thrash to arrest Hoffer.

Hoffer stepped toward Thrash, extending both hands, and said, ''Go ahead and arrest me.'' 2.5 Report of Proceedings (RP) at 53. Thrash cuffed Hoffer's left wrist without problem. Before Thrash could cuff his right hand, Hoffer started twisting and turning, and tried to reach into his pocket for his car

keys to give to More. Thrash ordered him to stop and to put his hands behind his back. Hoffer ignored this order, called Thrash a 'f{xxx}ing communist,' and pulled away from Thrash. A struggle ensued, during which Hoffer kicked Thrash in the right shin with his left foot.[1] Two other officers in the courtroom went to Thrash's assistance. Hoffer continued to struggle until he was finally subdued.

Thrash took Hoffer to his patrol vehicle, where he gave him his Miranda[2] rights. When Thrash asked for his name, Hoffer replied: ''I'm f{xxx}ing God.'' During the 30-minute ride to the Pierce County Jail, Thrash asked Hoffer for his name several times. Hoffer responded that he (Thrash) would be sorry when his brother got through with him; that he knew his First Amendment rights; and that he would sue him, the other officers, and the judge. Hoffer again called Thrash a 'f{xxx}ing communist.'

When they arrived at the jail, Thrash encouraged Hoffer to cooperate and told him that he would not be able to make bail if the jail staff could not book him under his name. Hoffer refused to provide his name. The jail staff told Hoffer that he failed booking, searched him, and found in one of his pockets a Washington State identification card with his name.

On October 15, 1998, the State filed an information charging Hoffer with third degree assault (Count I), contempt of court (Count II), and obstructing a law enforcement officer (Count III). Hoffer was arraigned and released from custody on the same day.

At a hearing on January 6, 1999 (83 days after arraignment), the parties agreed to continue the trial until January 13 because the deputy prosecutor had three other pending trials. On January 13, over Hoffer's objection, the court granted a seven-day continuance due to courtroom unavailability. On January 20, the court continued the trial until February 17 for two reasons: (1) the prosecutor was scheduled to start a murder trial; and (2) the trial judge recused himself at Hoffer's request. On February 17, the case was continued again, over Hoffer's objection, because the deputy prosecutor was in another trial. Hoffer's jury trial commenced on February 24. The jury found Hoffer guilty on all counts as charged.

Analysis

I. Speedy Trial

CrR 3.3(c)(1) requires that trial commence within 90 days of arraignment if the defendant is out of custody; otherwise, the court must dismiss the case with prejudice. CrR 3.3(i). We review an order granting a continuance for an abuse of discretion. State v. Carson, 128 Wn.2d 805, 814, 912 P.2d 1016 (1996).

Hoffer argues that the January 13 continuance order was an abuse of discretion because it was based on courtroom unavailability, which does not constitute 'good cause' under CrR 3.3(d)(8). State v. Warren, 96 Wn. App. 306, 309, 979 P.2d 915, 989 P.2d 587 (1999). Warren and our more recent decision

in State v. Smith, 104 Wn. App. 244, 15 P.3d 711 (2001), support his assertion that routine court congestion or courtroom unavailability cannot justify a continuance beyond speedy trial limits under either CrR 3.3(h)(2) or CrR 3.3(d)(8). Smith, 104 Wn. App. at 252; Warren, 96 Wn. App. at 309.

Without reaching the issue of whether the January 13 continuance was an abuse of discretion, we reject Hoffer's speedy trial claim. His argument erroneously assumes that January 13 was the 90th day. But this assumption is incorrect because, on January 6, Hoffer agreed to a seven-day continuance, and a continuance agreed on by the parties under CrR 3.3(h) is excluded from the 90-day speedy trial computation. CrR 3.3(g)(3). Here, the January 6 continuance tolled the speedy trial period for one week, resulting in the 90th day falling on January 20. Thus, the reason for the January 13 continuance, even if improper, was immaterial because the 90-day speedy trial limit had not yet expired.[3]

Accordingly, CrR 3.3's requirements were not violated. We hold that the trial court did not err by denying Hoffer's motion to dismiss based on a speedy trial violation.

II. Sufficiency of the Evidence

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency of evidence admits the truth of the State's evidence and all reasonable inferences therefrom. Salinas, 119 Wn.2d at 201. Further, 'all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.' Salinas, 119 Wn.2d at 201. In determining whether the necessary quantum of proof exists, we need not be convinced of the defendant's guilt beyond a reasonable doubt; we need only be satisfied that substantial evidence supported the conviction. State v. Galisia, 63 Wn. App. 833, 838, 822 P.2d 303 (1992).

A person is guilty of obstructing a law enforcement officer if he 'willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties.' RCW 9A.76.020(1). Hoffer claims that the evidence was insufficient to satisfy the elements of this offense because he did not obstruct Thrash merely by refusing to identify himself. He is correct in that mere refusal to answer questions cannot support an arrest for obstructing a law enforcement official. State v. Contreras, 92 Wn. App. 307, 316, 966 P.2d 915 (1998); State v. Hoffman, 35 Wn. App. 13, 16, 664 P.2d 1259 (1983). We reject Hoffer's claim, however, because the evidence established more than his mere refusal to give his name to Thrash.

There was substantial evidence of Hoffer's conduct from which the jury could find that he obstructed Thrash's performance of his duties to arrest him and to book him into the Pierce County Jail. During Thrash's initial contact with Hoffer in the courtroom, Hoffer physically resisted Thrash's attempt to arrest him. Resisting arrest is obstructing. See State v. Ortiz, 104 Wn.2d 479, 485, 706 P.2d 1069 (1985).

This, as well as evidence of Hoffer's later refusal to identify himself in the patrol car and at the jail, was sufficient to support the guilty finding that Hoffer hindered, delayed, or obstructed a law enforcement officer in the discharge of his duties. See, e.g., State v. Turner, 103 Wn. App. 515, 525, 13 P.3d 234 (2000).

Therefore, the evidence was sufficient to satisfy all the elements of obstructing a law enforcement officer under RCW 9A.76.020. We also find, contrary to Hoffer's arguments in his pro se supplemental brief, that the evidence was sufficient to support his convictions for contempt of court and third degree assault.

III. Jury Instructions

Hoffer assigns error to instructions 6 and 13, contending that both are impermissible comments on the evidence in violation of article IV, section 16, of the Washington State Constitution.[4]

Jury instructions satisfy the requirement of a fair trial when, taken as a whole, they properly inform the jury of the applicable law, are not misleading, and permit the defendant to argue his theory of the case. State v. Tili, 139 Wn.2d 107, 126, 985 P.2d 365 (1999). A trial judge is constitutionally prohibited, however, from influencing the jury by his or her personal opinion of the evidence. Const. art IV, sec. 16; Tili, 139 Wn.2d at 126; State v. Lampshire, 74 Wn.2d 888, 892, 447 P.2d 727 (1968). A comment is impermissible if it conveys to the jury a judge's personal attitudes toward the merits of the case or allows the jury to infer from the judge's comments that the judge personally believed the testimony in question. State v. Deal, 128 Wn.2d 693, 703, 911 P.2d 996 (1996). 'The touchstone of error in a trial court's comment on the evidence is whether the feeling of the trial court as to the truth value of the testimony of a witness has been communicated to the jury.' State v. Lane, 125 Wn.2d 825, 838, 889 P.2d 929 (1995).

Whether an instruction constitutes an improper comment depends on the facts and circumstances of each case. State v. Stearns, 61 Wn. App. 224, 231, 810 P.2d 41 (1991). Once the court has commented on the evidence, prejudice is presumed and the State has the burden of showing that no prejudice resulted. Lane, 125 Wn.2d at 838-89. We review the challenged instructions against these principles.

Instruction 13 defined 'assault' as follows:

An assault is an intentional touching, striking, or kicking of another person with unlawful force, that is harmful or offensive regardless of whether any physical injury is done to the person. A touching, striking, kicking is offensive, if the touching, striking, or kicking would offend an ordinary person who is not unduly sensitive.

An assault is also an act, with unlawful force, done with intent to inflict bodily injury upon another, tending, but failing to accomplish it, and accompanied with the apparent present ability to inflict the

bodily injury if not prevented. It is not necessary that bodily injury be inflicted. Clerk's Papers (CP) at 64.

Hoffer took exception to the word 'kicking,' arguing that its inclusion was unnecessary and constituted an improper comment on the evidence. We disagree.

This instruction correctly stated the law and was based on the Washington pattern jury instruction for the definition of assault. 11 Washington Pattern Jury Instructions: Criminal 35.50, at 453 (2d ed. 1994) (WPIC). Including the word 'kicking' simply clarified that this was a form of touching that could be an assault if the jury found it to be offensive. Adding clarifying language to the WPIC model instruction does not constitute an improper comment on the evidence if the wording did not convey the court's opinion about the evidence. See, e.g., Tili, 139 Wn.2d at 126-27 (holding, in a rape prosecution, the instruction stating that penetration by an object includes a finger was not an improper comment on the evidence). Thus, we hold that the trial court did not err by giving instruction 13.

Instruction 6 is more problematic. We note that Hoffer did not object to this instruction at trial. But the argument that an instruction was an improper comment on the evidence can be raised for the first time on appeal because of the constitutional implications. Tili, 139 Wn.2d at 126 n.9.

Instruction 6 stated:

Evidence has been introduced in this case on the subject of the Miranda warnings that were given to the defendant following his arrest by Deputy Thrash. The limited purpose of this evidence is that it is part of the circumstances of the defendant's arrest. You must not consider this evidence as conclusive proof that the defendant had a Constitutional right to refuse to identify himself as a matter of law. CP at 57.

It appears to be modeled on WPIC 5.30, which is used to instruct the jury when the defendant's prior misconduct is admitted under ER 404(b) for the limited purposes of showing motive or intent, or when prior consistent or inconsistent statements are admitted to impeach or rehabilitate a witness.[5] WPIC 5.30, Comment, at 132-33.

We acknowledge that it is unusual to instruct the jury on the limited purpose of admitting that Miranda[6] rights were given. And we have found no authority for instructing the jury on the consideration of evidence relating to the giving of Miranda warnings.

We first analyze instruction 6 to determine whether it is an accurate statement of the law. Its apparent purpose was to inform the jury that the giving of Miranda warnings does not mean an arrestee has the absolute right to withhold identification information under all circumstances. This is true. After Miranda warnings have been given, and even if the arrestee invokes the right to remain

silent, police may ask the arrestee 'routine questions during the booking process.' State v. Wheeler, 108 Wn.2d 230, 238, 737 P.2d 1005 (1987).[7] Furthermore, the refusal to provide identification, combined with other circumstances, may support probable cause for an arrest or conviction for obstructing law enforcement officers' performance of their duties.[8] Thus, we disagree with Hoffer's contention that instruction 6 misstates the law. Our inquiry does not stop here, however.

We next analyze the instruction to determine if it conveyed the judge's personal belief in the merits of the case. We find that it did not. The disputed issue was whether Hoffer's refusal to provide his name obstructed Thrash's duty to book him into the jail. Instruction 6 related to the circumstantial evidence of Thrash advising Hoffer of his Miranda rights. It told the jury that the giving of Miranda warnings was not conclusive proof that Hoffer had a constitutional right to refuse to identify himself. As stated earlier, this was a correct statement of the law. Its wording did not convey a personal opinion or belief of the judge in the merits of the case. We hold that instruction 6 was not an improper comment on the evidence.[9]

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, A.C.J.

We concur:

Morgan, J.

Bridgewater, J.

1. Thrash had a ½ inch long abrasion where Hoffer kicked him.

2. Miranda v. Arizona, 384 U. S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

3. Though the court subsequently granted two more continuances, on January 20 and on February 17, these continuances are not before us. On appeal, Hoffer challenges only the January 13 continuance. We note, without deciding, that the January 20 order (continuing trial until February 17) was based in part on the judge's recusal at Hoffer's request and thus, appears properly to extend the speedy trial period under CrR 3.3(d)(6). See State v. Armstead, 40 Wn. App. 448, 698 P.2d 1102 (1985) (holding trial judge's disqualification due to defendant's filing of affidavit of prejudice extended the speedy trial period for 30 days under CrR 3.3(d)(6)). Similarly, the February 17 order -- granted under CrR 3.3(d)(8) and CrR 3.3(h)(2) because the deputy prosecutor was in another trial -- was within the court's discretion. See, e.g., State v. Cannon, 130 Wn.2d 313, 326, 922 P.2d 1293 (1996) (two continuances granted because deputy prosecutor occupied in another trial); State v. Williams, 104 Wn. App. 516, 522-23, 17 P.3d 648 (2001) (cases cited therein).

4. 'Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law.' Const. art. IV, sec. 16.

5. WPIC 5.30 states: 'Evidence has been introduced in this case on the subject of for the limited purpose of . You must not consider this evidence {for any other purpose} {for the purpose of }.'

6. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

7. Wheeler held police questioning of the defendant if he knew 'Tony Smith,' after he asserted his right to remain silent, was error, but harmless, because it was not a routine question asked during the booking process. 108 Wn.2d at 238-39.

8. E.g., Turner, 103 Wn. App. at 525-26 (holding evidence sufficient for obstructing conviction where defendant refused to give his name and threatened and lunged at officer); Contreras, 92 Wn. App. at 315-17 (holding arrest for obstructing was lawful based on defendant disobeying order to keep hands up and exit vehicle and giving false name); City of Sunnyside v. Wendt, 51 Wn. App. 846, 854-55, 755 P.2d 847 (1988) (upholding conviction of obstructing based on defendant's refusal to identify himself after his involvement in a motor vehicle accident).

9. In his pro se supplemental brief, Hoffer argues additional instructional errors, none of which have merit. Contrary to his contentions, he was not entitled to instructions on self-defense, duress or reimbursement, and instructions 2 and 14 correctly instructed the jury on the reasonable doubt standard and the elements on the obstructing count.