COURT OF APPEALS
DECISION
DATED AND FILED

MAY 26, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 99-0196

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

IN THE INTEREST OF CLARISSA P.,
A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

CLARISSA P.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Racine County: EMILY S. MUELLER, Judge. *Affirmed.*

ANDERSON, J. Clarissa P. appeals from a dispositional order finding her delinquent for obstructing an officer contrary to § 946.41(1), STATS. She contends that the evidence is insufficient to support a finding that she obstructed the officer because merely refusing to give the officer her name does not constitute this offense. We find the evidence sufficient for the fact finder's

conclusion that Clarissa obstructed the officer because she refused to give him her name when asked, appeared to be attempting to flee and acted in a resistive manner to the officer's investigation of the scene. We affirm the delinquency adjudication.

On January 13, 1998, Clarissa, a fourteen-year-old high school student, was involved in a disturbance in a school hall. Clarissa had requested a hall pass to go to the school's office during a class period. She was stopped by a hall monitor, Emily Pelky, who asked for her hall pass. Pelky testified that she stopped Clarissa because she felt that Clarissa was abusing her pass privilege. Pelky stated that she witnessed "[t]wo girls walking in the hall fooling around, not going to class …. [T]hey were socializing instead of going to class." This was Pelky's second stop of Clarissa that hour.

After Pelky requested that Clarissa and her friend return to their classrooms, "they started getting mouthy with [her]." An argument ensued, and the loud, arguing voices prompted in-school police officer Christian Van Schyndel to come to the scene. Van Schyndel observed Clarissa and her friend refusing to obey Pelky. Because the girls were not listening to the hall monitor but instead were yelling at her, the officer told the girls that they should go back to their classes. When the girls did not cooperate, Van Schyndel walked up to Clarissa and asked her for her name.

What happened next is the subject of conflicting testimony. Van Schyndel testified that Clarissa refused to give him her name, and then he reached out to try to turn over her name tag identification that she was wearing around her neck. "When I reached out and took hold of it to … look at it, she pushed my arm away, [and] tried to push away from me. I thought … she was going to try to run

away from me." The officer then grabbed Clarissa's wrist and told her she was under arrest. He intended to arrest her for disorderly conduct for the noise and disturbance she created in the school's hallway.

However, Clarissa struggled with the officer. Van Schyndel recounted the events as follows:

> She struggled to get away from me. She tried to pull her wrists out away from how I was holding them, and at that time I told her to stop, she was under arrest, she continued to struggle. I put my hand against her upper chest … pushing her back against the wall that was immediately behind her…. Told her she was under arrest, told her to stop.
>
> She continued to struggle to try and pull away from me. She was screaming and yelling all the time.

Clarissa continued to scream and struggle. She was eventually handcuffed and carried to the school's office.

Steve Zahn, a teacher, corroborated the officer's description of events. He testified that there was a ruckus in the hallway with yelling voices that were getting louder. He witnessed Clarissa "flailing her arms around and yelling" and Van Schyndel "ask[ing] her about four or five times to stop" and eventually handcuffing her. Zahn stated, "I knew at that point that he was going to try to, you know, cuff her to subdue [her] … because she wasn't listening, and so I … held on to her and he put handcuffs on her."

Clarissa's sister, Latoya, had a different account of the events. She testified that Van Schyndel never asked Clarissa her name nor did he attempt to grab her name tag. Rather, she avers that the officer grabbed Clarissa by the arm, turned her around, threw her into the window, grabbed her back out of the window and threw her on the floor. Clarissa testified that the officer came at her from

behind and never said anything to her. She denied that he ever tried to reach for her name tag or asked for her name.

After hearing all of the testimony, the trial court found that the State had met its burden of proving the obstructing an officer charge and adjudged Clarissa delinquent on this count.[1] The court stated:

> I do believe that the officer asked Clarissa for her name tag, … that he attempted to reach for the name tag and that Clarissa attempted to pull away from him. That again in and of itself is obstructing an officer who at that point was doing something in his lawful authority.

It is from this delinquency adjudication that Clarissa appeals.

Clarissa argues that the evidence was insufficient to support the determination that she obstructed Van Schyndel, which is one element of the criminal act defined by § 946.41, STATS.[2] In reviewing the sufficiency of the evidence, we may not reverse the trial court unless the evidence, viewed in the light most favorable to the outcome of the proceeding, is so deficient that, as a matter of law, no reasonable fact finder could have reached the same result. *See* ***State v. Poellinger***, 153 Wis.2d 493, 507, 451 N.W.2d 752, 757-58 (1990). When the record shows that the evidence presented could have supported more than one inference, the reviewing court must accept the conclusion drawn by the fact finder unless the evidence upon which it is based is incredible as a matter of law. *See* ***id.*** at 506-07, 451 N.W.2d at 757. Finally, it is the trier of fact, not the appellate

[1] At that time, Clarissa was also adjudged delinquent for disorderly conduct contrary to § 947.01, STATS. She raises no appellate issues regarding this adjudication.

[2] The crime of obstructing an officer, § 946.61, STATS., consists of the following four elements: (1) the juvenile obstructed an officer; (2) the officer was doing an act in an official capacity; (3) the officer was doing an act with lawful authority; and (4) the juvenile knew that the individual was an officer acting in an official capacity and with lawful authority and the juvenile knew his or her conduct would obstruct the officer. *See* WIS J I—CRIMINAL 1766.

court, who has the opportunity to hear and observe testimony. Thus, the trier of fact is charged with resolving conflicts in testimony and weighing credibility. *See* ***id.*** at 506, 451 N.W.2d at 757.

Clarissa contends that according to ***Henes v. Morrissey***, 194 Wis.2d 338, 354, 533 N.W.2d 802, 808 (1995), merely refusing to give an officer your name does not constitute obstruction. We agree that ***Henes*** instructs us as to when sufficient evidence has been presented to the fact finder to satisfy the obstruction element of the offense. This case states that it is not obstruction when a defendant merely refuses to identify himself or herself to an officer. *See* ***id.*** at 353, 533 N.W.2d at 808. But the statute does apply when a defendant's acts hinder, delay, impede, frustrate or prevent the officer from performing his or her duties. *See* ***State v. Hamilton***, 120 Wis.2d 532, 543, 356 N.W.2d 169, 175 (1984); WIS J I—CRIMINAL 1766 cmt. 2.

We determine that the present situation is factually distinguishable from ***Henes***. In that case, the defendant was charged with obstructing an officer based solely on the act of refusing to identify himself to the officer. *See* ***Henes***, 194 Wis.2d at 353, 533 N.W.2d at 808. The supreme court explained its holding in ***Henes*** as follows:

> Mere silence, standing alone, is insufficient to constitute obstruction under the statute. Here, all Henes did was remain silent. He did not affirmatively act to obstruct the deputies' investigation: he did not give them false information, he did not flee from the deputies, nor did he act in any violent manner towards them. Without more than mere silence, there is no obstruction.

Id. at 354, 533 N.W.2d at 808. Unlike ***Henes***, this case presents more than just a defendant remaining silent or refusing to identify himself or herself. "The act justifying an arrest for obstruction cannot simply 'inconvenience' the official; the

action must make a difference in an official's ability to perform an official act." ***Id.*** Here, we have affirmative acts taken by Clarissa that more than just inconvenienced the investigation.

Upon review of the record, we hold that the court's finding that Clarissa obstructed the officer is supported by the record. Despite the conflicting testimony presented, the court found Van Schyndel's testimony to be credible; we will not second-guess the trial court's credibility decisions because it is in the best position to make such factual determinations. *See* ***State v. Marty***, 137 Wis.2d 352, 359, 404 N.W.2d 120, 123 (Ct. App. 1987), *overruled on other grounds by* ***State v. Sanchez***, 201 Wis.2d 219, 548 N.W.2d 69 (1996) ("The trial court is the ultimate arbiter of witness credibility."). Officer Van Schyndel and others testified that Clarissa refused to give her name to the officer when asked, she pulled away when he attempted to look at her name tag, she appeared to be attempting to flee and she acted in an overall resistive manner. These facts support the fact finder's conclusion that Clarissa obstructed the officer because they are acts that hindered, delayed, impeded, frustrated and prevented him from performing his duties. Such evidence satisfies the obstruction element of the offense. The trial court's adjudication of delinquency is therefore affirmed.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.