

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-225

FEBRUARY TERM, 2004

	} APPEALED FROM:
	}
State of Vermont	} District Court of Vermont, Unit No. 2, Addison Circuit
	}
v.	} DOCKET NO. 194-3-02 Ancr
	}
Rachel A. Hill	} Trial Judge: Helen M. Toor
	}
	}

In the above-entitled cause, the Clerk will enter:

Defendant appeals her jury conviction of hindering a law enforcement officer, in violation of 13 V.S.A. ' 3001. We affirm.

The incident that led to this case began when Addison Deputy Sheriff Mark Stacey, who was in uniform driving his personal vehicle, observed a car operating erratically. The officer was about to call in his observations when the vehicle abruptly pulled into the breakdown lane and stopped. Deputy Stacey pulled up alongside the car and began speaking to defendant, who was driving the car. Defendant= s husband, Stacy Hill (hereinafter Hill), became belligerent and threatened the officer, at which point Deputy Stacey told defendant and her husband to remain in the car while he made a telephone call. When the officer returned to his truck to call the state police, defendant pulled away at a high rate of speed. Deputy Stacey followed the car while reporting its location, and the state police eventually stopped defendant. State Trooper Robert Patten approached the driver= s side of the vehicle, while Sergeant Lee Hodsden walked around the car to the passenger= s side. Trooper Patten looked across the inside of the vehicle and asked Hill why he had been giving Deputy Stacey a hard time. Hill responded by screaming obscenities at the officer, who then moved around the car to assist Sergeant Hodsden and Deputy Stacey take control of Hill. Meanwhile, Sergeant Hodsden and Deputy Stacey began to pull Hill out of the car. As they did so, the three men lost their balance and fell down the embankment by the side of the road. As he approached the scene to assist the other officers, Trooper Patten heard screaming and saw defendant start to go past him towards her husband and the other officers. At that point, Trooper Patten grabbed defendant by the coat and told her to stop. Defendant struggled with Trooper Patten, all the time screaming for the officers to let her husband alone. When defendant continued to struggle, Trooper Patten arrested her.

Defendant was originally charged with two counts of hindering a law enforcement officer B one for hindering Deputy Stacey by driving off with her husband after the officer had told them to wait in the car, and the other for hindering Sergeant Hodsden and Deputy Stacey by repeatedly attempting to intervene in the arrest of her husband. On the morning of defendant= s trial, before the jury had been impaneled and sworn, the State filed an amended information for count two that substituted Trooper Patten for Sergeant Hodsden and Deputy Stacey as the officer defendant hindered. Defense counsel objected to the amended information, arguing that she had prepared to cross-examine Sergeant Hodsden and Deputy Stacey regarding the original charge. She did not seek a continuance to prepare a defense based on the amended charge, however, and she acknowledged that the original affidavit supported the amended charge. The trial court permitted the amended information, noting that the amendment did not purport to change the incident at issue. Following the jury verdict, defendant filed a motion for judgment of acquittal as to both counts. The court granted

defendant's motion as to count one, ruling that defendant's refusal to obey Deputy Stacey's command to wait could not, in and of itself, constitute hindering a law enforcement officer under this Court's holding in State v. Stone, 170 Vt. 496, 502-03 (2000) (defendant's failure to follow officer's command did not, in and of itself, support her conviction of hindering law enforcement officer). The court denied the motion as to count two, however, ruling that there was sufficient evidence for the jury to conclude that defendant hindered Trooper Patten by forcing him to attend to her rather than aid the other officers who were arresting her husband.

On appeal, defendant first argues that the evidence was insufficient to support her conviction. According to her, all she did was approach the officers arresting her husband and yell at them to leave him alone. She notes that mere remonstrance with an officer cannot, by itself, support a conviction of hindering a law enforcement officer. In her view, no evidence demonstrates that she attempted to physically intervene with the arrest, and further no evidence suggests that the two other officers even needed assistance from Trooper Patten. While defendant's statement of the law is correct as far as it goes, her characterization of the circumstances that led to the charge against her skew the evidence in her favor. Viewed most favorably from the perspective of the State, the evidence shows that defendant went beyond mere remonstrance first by attempting to enter the fray and then by resisting Trooper Patten's attempts to stop her. See id. at 503 (standard on appeal is same as that in trial court for challenging sufficiency of evidence B whether evidence, when viewed most favorably to State and excluding modifying evidence, fairly and reasonably tends to show beyond reasonable doubt that defendant violated ' 3001). Defendant's repeated attempts to approach the site of the arrest required Trooper Patten to subdue her rather than assist in the arrest of her husband. Whether Hill was resisting arrest, and thus whether Trooper Patten's assistance was ultimately required by the other officers, is irrelevant. The officers were dealing with an intoxicated, belligerent man. As Trooper Patten testified, the safety of all concerned is enhanced by having enough officers to subdue a potentially resistant subject. The jury could have reasonably concluded that, by attempting to enter the fracas and requiring Trooper Patten to deal with her, defendant interfered with Trooper Patten's attempt to assist in the arrest of her husband.

This case is distinguishable from Stone, where we overturned a hindering conviction that was based exclusively on the defendant's failure to obey a police officer's command. In Stone, as here, the defendant was driving a vehicle when police stopped the car and attempted to arrest her husband. At one point, the defendant exited the vehicle and began walking towards the rear of the car. When she failed to obey the officer's command that she return to the car, the officer walked back around to the driver's side of the car and attempted to place her under arrest. Eventually, she was charged with hindering a police officer. This Court reversed the conviction, holding that the defendant's failure to obey the officer's command to get back inside the car did not automatically make her guilty of hindering a law enforcement officer. Id. at 500. In so holding, we emphasized that the defendant had a right to walk away from the vehicle, and that A [b]ecause she had not yet reached the rear of the vehicle, there [was] no indication that she intended to physically interfere with the arrest of her husband.@ Id. at 502-03. Here, in contrast, the evidence indisputably demonstrated that defendant had rounded the rear of the vehicle and was approaching the scene of her husband's arrest when she was stopped by Trooper Patten. The evidence also demonstrates that she struggled with Officer Patten in an effort to break away and approach the other officers arresting her husband. Indeed, defendant does not even contend that she was merely walking away from the scene, as did the defendant in Stone. In short, defendant's hindering charge here was based on her attempt to interfere with the arrest of her husband, not on her failure to obey Officer Patten's command.

Defendant also argues that the trial court committed prejudicial error by permitting the State, over her objection, to amend count two on the day of trial to allege that she interfered with Trooper Patten rather than Sergeant Hodsden and Deputy Tracey. According to defendant, she was prejudiced because the amendment made it easier for the jury to convict her. We find no merit to this argument. The issue is not whether the amendment eased the State's task, but rather whether defendant's ability to defend herself was unfairly compromised by the amendment. See State v. Beattie, 157 Vt. 162, 170 (1991) (right to amend information prior to trial is subject to constitutional requirement that defendant receive fair notice of the charge). As noted, the original affidavit supported the amended information, and the State offered no new evidence to support the amendment. Other than noting that the amendment made the State's job easier, defendant does not indicate on appeal how she was prejudiced by the last-minute amendment. Defendant does not cite any investigative avenues that she was unable to pursue because of the amendment. Nor does she claim that the amended information rendered her cross-examination of Trooper Patten or the other officers ineffective. Under these circumstances, defendant has failed to demonstrate the prejudice required to strike the amended information and overturn her conviction.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Paul L. Reiber, Associate Justice