IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM
Plaintiff-Appellee,

vs.

NORBERT P. PEREZ, JR.
Defendant-Appellant

OPINION

Supreme Court Case No. CRA98-015
Superior Court Case No. CM0216-97
CM0449-97
CM0450-97

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Appeal from the Superior Court of Guam
Argued and submitted on May 11, 1999
Hagåtña, Guam

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BEFORE: BENJAMIN J. F. CRUZ, Chief Justice, PETER C. SIGUENZA, Associate Justice, and RICHARD H. BENSON, Designated Justice.

CRUZ, C.J.:

[1] Appellant Norbert P. Perez, Jr. appeals his convictions for Obstructing Governmental Functions, Reckless Conduct, and Obstructing the Public Ways. For the reasons set forth below, we reverse Appellant's conviction for Obstructing Governmental Functions but affirm the jury's verdict as to the remaining charges.

FACTUAL AND PROCEDURAL BACKGROUND

[2] At approximately noon on three separate occasions: December 15, 1996, December 22, 1996, and February 16, 1997, Norbert P. Perez, Jr. (hereinafter, "Appellant") blocked the outermost southbound lane of Route 4 by the Chaot Bridge in Sinajana. Appellant utilized cones to block the lane on the first two occasions. He later used cones and 55-gallon drums during the last roadblock.

[3] The record reflects that prior to each incident, the Guam Police Department ("GPD") received notice of the time and place of the roadblock. Appellant provided such notice to GPD, via facsimile, prior to most, if not all, of the occasions when he set up the roadblocks. In addition, Appellant notified the local media of his intent to form the roadblocks. Upon receiving such notice, GPD placed police vehicles at points before and after the blockage to alert drivers. Significantly, each time Appellant blocked the road, GPD approached Appellant no less than three times, at six to eight minute intervals, in an effort to have Appellant remove both himself and the cones from the roadway and cease the traffic blockage. However, Appellant would refuse--at times stating, "I want to be arrested." It is undisputed that each time Appellant

was arrested, he surrendered peacefully.

[4] For each of the three incidents, Appellant was charged with committing three offenses: 1) Obstructing Governmental Functions, in violation of Title 9 GCA § 55.45 (1993); 2) Reckless Conduct, in violation of Title 9 GCA § 19.40 (a) (1) and (b) (1994); and 3) Obstructing the Public Ways in violation of Title 9 GCA § 61.35 (a) (1996) for a total of nine charges. At trial, Appellant was found guilty of all charges. On appeal, Appellant asserts that there was insufficient evidence to support each conviction.

ANALYSIS

[5] This court has jurisdiction over this matter pursuant to Title 7 GCA §§ 3107 and 3108 (1994).

A. Obstructing Governmental Functions

[6] We first address whether there was sufficient evidence to support the three convictions for Obstruction of Governmental Functions pursuant to Title 9 GCA § 55.45 (1993). In conducting this review, the evidence is viewed in the light most favorable to the prosecution and we ascertain whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Reyes*, 1998 Guam 32, ¶ 7 (citation omitted).

[7] As a consequence of forming the roadblocks on three separate occasions, Appellant was arrested and charged for the Obstruction of Governmental Functions, a violation of Title 9 GCA § 55.45 which provides:

> A person commits a misdemeanor if he intentionally obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this Section does not apply to flight by a person charged with crime, refusal to submit to arrest,

> failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

9 GCA § 55.45 (1993). For each of the alleged offenses, the People had to prove beyond a reasonable doubt that (1) the defendant, Norbert P. Perez, Jr.; (2) did intentionally obstruct, impair and pervert the administration of law or other governmental function; (3) by physical interference and obstacle, that is, by blocking off Route 4, Sinajana, with his body and traffic cones; (4) within Guam; and (5) on the respective dates.

[8] Our review of the evidence, even in the light most favorable to the prosecution, leads us to conclude that no rational juror could have found, beyond a reasonable doubt, that the Appellant obstructed, impaired or perverted the administration of law or other government function. For the reasons below, we hold that the prosecution of this particular charge under these circumstances was beyond the proscription of the instant statute.

[9] Guam's codification of this offense was wholly derived from section 242.1 of the Model Penal Code. *See* 9 GCA § 55.45 cmts. Other jurisdictions have adopted a similar provision. *Id. See, e.g.*, N.J. STAT. ANN. 2C:29-1 (West 1998), and 18 PA. CONS. STAT. ANN. § 5101 (West 1998). Beginning with the American Law Institute's comments to the corresponding provision of the Model Penal Code, it was observed that the purpose of the statute was to prohibit a broad range of behavior that impedes or defeats the operation of government. MODEL PENAL CODE, § 242.1 cmt. 2 (1980). It is broad because not all forms of obstruction can be anticipated and precisely proscribed in specific offenses and because the existence of a residual misdemeanor offense facilitates appropriately narrow definition of the serious forms of obstruction carrying felony penalties. *Id.* However, it was also recognized that certain limitations must be incorporated otherwise policy decisions expressed elsewhere in the penal code may be nullified. *Id.*

Additionally, most importantly in our view, the obstruction offense must not be drafted in terms so expansive that they might be construed to cover political agitation against government policy or other exercise of civil liberties. *Id. See also* 9 GCA § 55.45 cmt. Finally, because the statute explicitly exempts any other means of avoiding compliance with law without affirmative interference with governmental functions the object of the obstructive conduct must be a government function in order for the statute to apply.

[10] Thus, as it pertains to this case, the question is whether there was a government function or some administration of law occurring at the time of Appellant's placement of cones and his person upon the roadway. The People have posited the argument that the protection and safety of the public in general was the government function or administration of law that police personnel were obstructed from performing by the Appellant's acts. We do not agree.

[11] An examination of how other jurisdictions have interpreted their respective similar statutes compels us to hold that Appellant's conduct here had worked no such impairment of a government function nor were police personnel obstructed from carrying out their duties. Pennsylvania's statute is substantially similar to Guam's; and, illustrative of the type of behavior that that statute proscribes and the government function or administration of law that is involved, are the following cases.[1] In *Commonwealth v. Kelly,*

[1]Pennsylvania's statute provides:

> A person commits a misdemeanor of the second degree if he intentionally obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with a crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with the law without affirmative interference with governmental functions.

18 PA. CONS. STAT. ANN. § 5101 (West 1998).

369 A.2d 438 (Pa. Super. Ct. 1976), the defendant, a police officer who was allegedly being paid money by a mobster for noninterference with the latter's gambling operation, had effected the arrest of an undercover police officer investigating the criminal enterprise. The arrest led to the agent's cover being blown. The court there found that the arrest had been a means to an end, that being the hindrance of the investigation of the gambling operation and therefore, an obstruction to the administration of law. *Id.* at 443. Similarly, in *Commonwealth v. Trolene*, 397 A.2d 1200 (Pa. Super. Ct. 1979), the defendant's conviction for the obstruction of the administration of law was upheld. There, the defendant allegedly conspired with another to fix the latter's pending criminal case by speaking to the judge and falsely informing the judge that another judge was interested in the defendants. And in *Commonwealth v. Mastrangelo*, 414 A. 2d 54 (Pa. 1980), the conviction of a defendant for obstructing the administration of law or other governmental function was upheld by the Supreme Court of Pennsylvania. There the defendant had confronted a meter maid after she had issued a parking citation and proceeded to shout and hurl offensive comments at her. The next day, the meter maid was again patrolling the same street and was again confronted in the same belligerent manner by the defendant until the meter maid left the area. The court found that the defendant, through a course of disorderly conduct, intentionally obstructed a meter maid from carrying out her lawful duties. *Id.* at 59-60.

[12] Another jurisdiction with a similar provision is New Jersey.[2] In the case of *State v. Perlstein*, 502

[2]New Jersey's statute provides:

> A person commits a disorderly persons offense if he purposely obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from lawfully performing an official function by means of intimidation, force, violence, or physical interference or obstacle, or by means of any independently unlawful act. This section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

A.2d 81 (N.J. Super. Ct. App. Div. 1985), a police officer observed the defendant driving a vehicle that had a door decal on the windshield. After she had parked, the officer pulled alongside, exited his vehicle and confirmed that it was a decal. He then informed the defendant that it was a violation of law to obstruct the windshield and that that certain type of decal was not allowed to be placed anywhere on motor vehicles. The officer testified that he was going to allow the defendant to get a scraper to scrape the decal but at some point she became uncooperative and refused to remove the sticker. The officer told the defendant if she did not remove the sticker he was going to issue her a summons. The defendant refused and began to rant and rave at the officer. The officer asked the defendant to produce her driver's license and registration which she refused to tender and continued to spew a barrage of comments to the officer. Finally, the defendant said she was going to see the chief of police and attempted to drive away and was eventually prevented from doing so. The defendant was charged, *inter alia*, with obstructing the administration of law. The defendant was convicted of the charge and appealed.

[13] The Appellate Division rejected each of the defendant's arguments and upheld her conviction of the obstruction charge. First, it found that the defendant had engaged in independently unlawful acts, i.e., failing to produce her driving credentials upon request of a police officer and attempting to move her car contrary to the officer's directions. *Perlstein*, 502 A.2d at 85. And on the basis of this evidence, concluded that she had purposely obstructed the performance of the officer's duties. *Id.* Next, the court found that the defendant did not fit into any of the specified exceptions to the statute. *Id.* The evidence clearly showed there was no refusal to submit to an arrest. *Id.* Nor was the defendant charged with a crime when she attempted to flee. *Id.* at 85-86. Lastly, the court rejected the defendant's argument that because

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N.J. STAT. ANN. § 2C:29-1 (West 1998).

she failed to perform a legal duty, specifically, to show her driving credentials, that the statute did not apply to her. *Id.* at 86. The court reasoned that such a reading of the statute would render as superfluous the provision condemning behavior "by means of any independently unlawful act." *Id.* And on that basis, it declined to construe the provision as advanced by the defendant. *Id.*

[14] Our impression of these cases is that they have in common the factual predicate that the performance of some governmental function or the due administration of the law was interfered with, obstructed, or perverted by the offender's conduct. *See, e.g., Kelly*, 369 A.2d 438 (hinders an ongoing investigation of an illegal gambling operation); *Trolene*, 397 A.2d 1200 (attempts to corrupt the judicial process); *Mastrangelo*, 414 A.2d 54 (prevents a meter aid from patrolling her assigned area); *Perlstein*, 502 A.2d 81 (failure to provide driving credentials upon request by police enforcing traffic laws).[3]

[15] The People's reliance on two particular cases for the proposition that the Appellant's conduct was appropriately charged for and convicted of is misplaced. First, contrary to the People's assertion, *Potts v. City of Lafayette, Ind.*, 121 F. 3d 1106 (7th Cir. 1997), was an appeal of the grant of an adverse summary judgment and not a direct appeal of a conviction. Further, that portion of the decision even remotely relevant to the instant case is in the court's discussion of the substantive facet of the plaintiff's Fourth Amendment claim. Notwithstanding, in *Potts*, the plaintiff was arrested for resisting a lawful order of a law enforcement officer by trying to gain entry to a rally of the Ku Klux Klan. Under Indiana law, the offense is committed where a person "knowingly or intentionally forcibly resists, obstructs, or interferes with a law enforcement officer . . . while the officer is lawfully engaged in the execution of his duties as an

[3]Although the statutory provisions differ, there are other examples illustrative of the behavior that have been found to obstruct governmental functions or the administration of law in *State v. Manning*, 370 A.2d 499 (N.J. Super. Ct. App. Div. 1977)(police officer trying to investigate a DUI), and *State v. Lashinsky*, 404 A.2d 1121 (N.J. 1979)(police officer trying to secure the scene of an automobile accident)

officer." *Id.* at 1113. (citation omitted) (quotation in original). The factual predicate in that case was that law enforcement personnel were there to provide security for the rally and to control the possible introduction of weapons in a volatile environment. The Seventh Circuit Court of Appeals concluded that plaintiff's conduct constituted the offense charged and that he was properly arrested upon probable cause for purposes of the Fourth Amendment. *Id.*

[16] The People's citation to the case of *United States v. Cooley*, 1 F. 3d 985 (10th Cir. 1993), overlooks the government function that was obstructed. In that case, the appellants were abortion protesters who were arrested after they climbed a fence and sought to block access to a medical clinic. They were charged and convicted by a jury of violating the federal obstruction statute which makes it a misdemeanor for any person, by threat or force, willfully to prevent, obstruct, impede, or interfere with, or willfully attempt to prevent, obstruct, impede, or interfere with, the performance of duties under any order, judgment, or decree of the United States. The appellants challenged the sufficiency of the evidence to convict them. Again, the factual predicate in that case was the existence of a court order upon which the law enforcement personnel, the United States Marshals, were tasked to enforce, specifically ensuring the free ingress and egress through the entrances of the clinic. *Id.* at 996. The Tenth Circuit Court of Appeals found sufficient evidence to sustain the convictions. *Id.* However, because the court determined that the trial judge abused his discretion when he denied the defendants' motion to disqualify himself, it vacated the convictions and remanded for a new trial before a different judge. *Id.* at 998.

[17] The charge to the jury included an instruction for the meaning of the administration of law which provided: "The administration of law means the practical management and direction of the executive department, or of the public machinery or functions, or of the operations of the various organs or agencies.

Direction or oversight of any office, service, or employment." Transcript, vol. V of V, pp. 79-80 (Trial, May 8, 1998). While the foregoing may be an adequate definition of what is meant by the administration of law, we could not discern any evidence that the Appellant's actions served to impede it.

[18] In the instant case, the evidence adduced at trial was that the police were informed, directly and indirectly, that Appellant would be setting up a roadblock along Route 4. Based upon this information, the police then formulated an operations plan to deal with the planned protest. It appears that the plan called for the placement of officers at various locations to monitor the flow of traffic along Route 4 and to take precautions should the roadblock cause some disruption in the traffic pattern along the roadway. Second, it accounted for the contingency that should Appellant follow through with his actions that a task force would be in place to either convince the Appellant to cease his actions or to be arrested.

[19] Appellant's conduct neither interfered with nor obstructed with the officers' duties as they were in place at the time of the incident. The record is devoid of any evidence that Appellant engaged in some action directed at preventing the police from monitoring traffic along Route 4. The People argue that Appellant somehow interfered with the GPD's general duty of ensuring the safety and welfare of the public; however, we do not see how Appellant's actions prevented the officers from discharging that duty. In fact, the officers performed their duty by eventually arresting Appellant and clearing the roadblock. Undoubtedly, the charge of Obstructing the Public Way, pursuant to Title 9 GCA § 61.35 (1996), more completely and accurately covered the Appellant's conduct.

[20] Therefore, because there was no evidence from which a rational juror could have found that the Appellant had obstructed, impaired or impeded the administration of law or any other governmental function by his acts, we reverse Appellant's convictions for this particular charge.

B. Reckless Conduct under Title 9 GCA § 19.40.

[21] The second issue pertains to the sufficiency of the evidence as to the Reckless Conduct charges. The statute at issue provides in relevant part:

> § 19.40. Reckless Conduct; Defined & Punished.
> (a) A person is guilty of reckless conduct if he:
> (1) recklessly engages in conduct which unjustifiably places or **may place another in danger of death or serious bodily injury**;. . .
> (b) Reckless conduct is a misdemeanor.

9 GCA § 19.40 (a) (1) and (b) (1994) (emphasis added).

[22] Section 19.40 punishes "conduct which, though fortuitously not resulting an injury, is reckless with the respect to the creation of danger to life." *See* 9 GCA § 19.40 cmt. In this case, no one was harmed largely because GPD was present during the roadblocks to provide for the public's safety. However, regardless of the absence of harm, the statute prohibits actions that "*may* place another in danger of death or serious bodily injury." 9 GCA § 19.40(a)(1) (emphasis added). The record reveals that Appellant's actions may have placed the motorists and spectators at the scene in danger. Indeed, the testimony by the officers was virtually unanimous on one point--the blind curves on each end of the roadblock as well as the placement of cones and drums on or by the roadway created a hazard to both motorists and spectators.

[23] Appellant argues that the presence of police officers may have actually heightened the safety of spectators and motorists in the area. Although this may have been true, this assertion misses the point of the statute. The fact that GPD created a "plan" or "task force" designed to deal with Appellant's roadblock serves to underscore the risk of danger created by Appellant's conduct. Appellant simply cannot take credit for the prudent actions of the officers at the scene, when he alone was responsible for creating the hazard in the first place.

[24] To conclude, it is undisputed that GPD was present from the very onset of Appellant's roadblocks in order to help prevent harm from occurring. However, the fact that no harm occurred does not necessarily take Appellant's conduct out of the scope of reckless conduct. The statute punishes conduct that either results in harm or *may* result in harm. Therefore, because the record clearly reflects that Appellant's conduct *may* have created a serious risk of death or serious bodily harm, we believe that a rational trier of fact could find the essential elements of the crime beyond a reasonable doubt.

C. Obstructing the Public Way under Title 9 GCA § 61.35.

[25] The third and final issue pertains to whether or not the People provided sufficient evidence to prove all the elements of Obstructing the Public Way under Title 9 GCA § 61.35. This court once again reviews the evidence in the light most favorable to the prosecution to ascertain whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Reyes*, 1998 Guam 32, ¶ 7. Once again, this is a highly deferential standard. *Id.*

[26] Appellant contends that the road at issue was not proven to be a "public way." Section 61.35 provides:

> Obstructing the Public Ways; Defined & Punished.
>
> (a) A person commits a petty misdemeanor if he unreasonably obstructs the free passage of foot or vehicular traffic on any public way, and refuses to cease or remove the obstruction upon a lawful order to do so given him by a law enforcement office.
>
> (b) As used in this Section, public way means any public highway or sidewalk, private way laid out under authority of statute, way dedicated to public use, or way upon which the public has a right of access or has access as invitees or licensees.

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9 GCA § 61.35 (1996).[4]

[27] The record reveals that Carl T.C. Gutierrez, Governor of Guam, as well as a representative of Land Management testified that the road in question was indeed a "public way." In view of the highly deferential standard we must apply to this analysis, we believe that ample evidence exists whereby a rational trier of fact could conclude that the road at issue is indeed, a "public way."

[28] Appellant further contends that the People failed to prove that Appellant disobeyed a "lawful order." The record reveals that GPD made several "requests" and "warnings" directed toward Appellant to stop blocking the road. Upon review of the entire trial transcript, we note that there were numerous instances whereby witnesses testified that they "warned," "informed," "requested," and "asked" Appellant to remove himself and the cones/drums.

[29] As to the instant matter, the requirement of a specifically labeled "order" is unnecessary especially considering that Title 9 GCA § 61.35 focuses upon the conduct of the individual obstructing a public way, and not the actions of the officials. Given the context of the situation, we are satisfied that sufficient evidence exists to sustain the convictions, particularly in light of the deferential standard we are obligated to apply.

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[4]The comment to this statute proves highly informative. It provides,

> This is a new Section to Guam and sorely needed. This Section would make criminal the act of blocking what is defined by Subsection (b) as the "public way". For the first time, police would be permitted to take action when some landowner unreasonably blocks a road which has been regarded as, and can be defined as a "public way". Heretofore, the police have been powerless in such cases, and have been required to leave the matter up to the village commissioner, or other civil remedy.

9 GCA § 61.35 cmt.

CONCLUSION

[30] Therefore, based upon the facts and case law pertaining to the issues on appeal, we hold that there was not sufficient evidence to sustain the convictions of Obstructing Governmental Functions; however, we also conclude that sufficient evidence exists to justify the convictions of Reckless Conduct and Obstructing the Public Ways. Accordingly, we **REVERSE**, in part, and **AFFIRM**, in part, the verdict of the jury.

PETER C. SIGUENZA
Associate Justice

RICHARD H. BENSON
Designated Justice

BENJAMIN J. F. CRUZ
Chief Justice