STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0287

State of Minnesota,
Respondent,

vs.

Antonio Francis Bragg,
Appellant.

Filed February 12, 2018
Affirmed
Larkin, Judge

Hennepin County District Court
File No. 27-CR-16-4382

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Susan L. Segal, Minneapolis City Attorney, Zenaida Chico, Assistant City Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Luke A. Hasskamp, Special Assistant Public Defender, Robins Kaplan, LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Bratvold, Judge; and Florey, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant was convicted of misdemeanor trespass after a jury trial. Appellant challenges his conviction, arguing that the evidence was insufficient to sustain the jury's guilty verdict. Appellant also argues that the prosecutor engaged in misconduct by misstating the law in closing argument. We affirm.

FACTS

Respondent State of Minnesota charged appellant Antonio Bragg with trespass and disorderly conduct after he caused a disturbance in the Hennepin County Government Center and refused to leave as commanded by law-enforcement officers. The charges were tried to a jury.

The trial evidence included an order commanding Bragg to appear at the government center for an eviction hearing at 8:30 a.m. on February 12, 2016. At trial, Y.W., a clerk at the government center, testified that Bragg was not present when his case was called for hearing at 8:34 a.m., 8:40 a.m., and 8:48 a.m. Bragg's case proceeded in his absence, and a housing-court referee ordered judgment against him by default. Y.W. locked the courtroom after the hearing. Bragg arrived at the courthouse around 9:00 a.m. Y.W. testified that she attempted to give Bragg his copy of the judgment but Bragg was "agitated, very loud, and wouldn't accept the information he was being given."

J.H., another clerk, testified that Bragg asked her for the location of the referee's office, and she told him he could not speak with the referee because that would be ex parte communication. She testified that Bragg asked her if she was an attorney, and when she

responded that she was not, he angrily told her she was "nothing but a clerk" and "needed to know [her] place." J.H. testified that Bragg was tense and agitated, and that he yelled at all of the clerks in the clerks' office, who tried not to engage him to avoid escalating the situation. J.H. testified that someone eventually called for security assistance.

Deputy Jeremy Heilman testified that he and Deputy Timothy Shulte responded to a distress call in housing court around 9:30 a.m. on February 12. He further testified that the court clerk who pressed the emergency button pointed to Bragg and indicated that Bragg did not like the outcome of his case. Deputies Heilman and Shulte tried to speak with Bragg. Deputy Heilman testified that Bragg was defiant and would not let the deputies talk to him or explain the situation. Instead, Bragg repeatedly asked, "Am I under arrest? Am I under arrest?" and talked over the deputies. Deputy Heilman testified that he did not intend to arrest Bragg; the clerk just wanted Bragg escorted out of the building so court personnel could continue working.

Deputy Heilman testified that he is authorized to ask people to leave the government center, that he told Bragg he needed to leave one or two times, and that Bragg was unwilling to leave. Deputy Heilman further testified that Bragg refused to leave when Deputy Shulte attempted to convince him to do so. Deputy Shulte therefore attempted to use an escort hold to escort Bragg out of the building, but Bragg "locked his feet and planted them on the ground." When Deputy Heilman saw Bragg tensing up, he grabbed Bragg's arm to prevent him from pulling away or starting a fight. The officers arrested Bragg for being disorderly with the clerks and for refusing to leave upon demand.

Deputy Shulte testified that he is authorized to ask people to leave the government center and that he told Bragg: "You need to leave the building," "[y]our business is through here for the day," and "[i]f you want to come back at a later date, you can, but you need to leave now." In response, Bragg took a fighting stance and was adamant that he was going to see a judge. Deputy Shulte again told Bragg that he needed to leave, but Bragg refused, stating that he had business in the building. Deputy Shulte testified that, because Bragg refused to leave, he grabbed Bragg's arm. Bragg "planted his feet" and refused to move. Deputy Shulte testified that the deputies arrested Bragg and took him into custody because they had "given him plenty of opportunities and it was pretty evident that he wasn't going to leave."

Bragg testified that he arrived late for his eviction hearing and attempted to make contact with the referee who had heard his case. He denied raising his voice to any of the clerks at the courthouse. Bragg testified that he tried to contact the referee's "chambers, the referee, or anyone in his staff" three times. He testified that he was leaving the courthouse when he encountered law-enforcement officers and that he initiated a conversation with them. He denied that he was told to leave before Deputy Shulte grabbed him. Bragg testified that he was talking with Deputy Shulte's supervisor, who told him he was not under arrest, when Deputy Shulte grabbed him and arrested him.

A video of the encounter was admitted into evidence. The video, which has no audio, shows Bragg interacting with multiple law-enforcement officers at the far end of a hallway. It also shows Bragg walking through a doorway and engaging in conversation

with officers. The encounter lasts approximately two minutes, and it concludes with Bragg being led away in handcuffs.

The jury found Bragg guilty of trespass and not guilty of disorderly conduct. After trial, Bragg moved the court for "judgment notwithstanding the verdict."[1] The district court denied the motion, entered judgment of conviction, and sentenced Bragg to serve ten days in a correctional facility, stayed for one year. Bragg appeals.

D E C I S I O N

Bragg challenges his conviction, arguing that the evidence was insufficient to sustain the jury's guilty verdict, that the district court erred by denying his motion for judgment of acquittal, and that the prosecution engaged in misconduct by misstating the law during closing argument. We address each of his arguments in turn.

I.

In considering a claim of insufficient evidence, this court's review is limited to a close analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We must assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This is especially true when resolution of the matter depends mainly on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584

[1] Although Bragg's attorney moved for "judgment notwithstanding the verdict," we treat the motion as one for judgment of acquittal. *See* Minn. R. Crim. P. 26.03, subd. 18(3)(a) ("If the jury returns a verdict of guilty . . . a motion for judgment of acquittal may be brought within 15 days after the jury is discharged.").

(Minn. 1980). We will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Minn. Stat. § 609.605 subd. 1(b)(3) (2016) provides that a person is guilty of a misdemeanor if the person intentionally "trespasses on the premises of another and, without claim of right, refuses to depart from the premises on demand of the lawful possessor."

Bragg argues that the evidence at trial was insufficient to sustain the jury's verdict for two reasons. First, he argues that the state failed to prove that he did not have a claim of right to be in the government center. A claim of right includes "[e]xpress or implied consent—a license—to a person from one who has the authority to give such consent." *State v. Hoyt*, 304 N.W.2d 884, 889 (Minn. 1981). A person possesses a claim of right if he has a good faith basis to believe he is lawfully present on the premises. *Id.* at 890. However, a claim of right that derives from a license is only a defense to a charge of trespass if it has not been revoked. *See id.* (stating that, if the owner of the property "had withdrawn express consent, or if they had acted in such manner as to give rise to implied consent which had been withdrawn, defendant would have no license to enter [the property]").

"An individual is guilty of trespass if he intentionally enters or remains, without claim of right, on the premises of another after being told to depart by the lawful possessor." *State v. Occhino*, 572 N.W.2d 316, 319 (Minn. App. 1997), *review denied* (Minn. Jan. 28, 1998). In *Occhino*, the defendant entered a police department and persistently asked

questions about a case that had been decided against him. *Id.* at 318. The defendant was informed he needed to leave, but he raised his voice, paced back and forth, and expressly refused commands to leave. *Id.* The defendant physically resisted an attempt to escort him from the area. *Id.* The defendant was found guilty of trespass and this court upheld his conviction. *Id.* at 316. We reasoned that "[a] disruptive and hostile individual has no legal right to remain on the premises after being ordered to leave by a police officer." *Id.* at 319 (citing *State v. Quinnell*, 277 Minn. 63, 70, 151 N.W.2d 598, 604 (1967)). We also reasoned, "Once an individual is ordered to leave, that person must depart and has no legal right to remain [just] because the premise is public property . . . . '[T]he First Amendment does not guarantee access to property simply because it is owned or controlled by the government.'" *Id.* (quoting *United States Postal Serv. v. Greenburgh Civic Ass'ns*, 453 U.S. 114, 129, 129 S. Ct. 2676, 2685 (1981)).

In this case, there is no dispute that the deputies were authorized to demand that Bragg leave the government center. Their repeated directives to do so—which occurred *after* Bragg's eviction hearing had ended—eliminated Bragg's good faith basis to believe he could lawfully remain at the government center.

Bragg's second argument is that "even if this Court finds that [he] did not have a claim of right to be at Housing Court at the time the deputies seized him, [he] must still have been provided a reasonable opportunity to comply with the demand to leave." He asserts, "If a license to enter premises has been revoked, 'the licensee must be given a reasonable opportunity to remove himself and his effects from the land,'" quoting Restatement (First) of Property § 519. Bragg concludes, "it is beyond dispute [that he] was

not provided a reasonable opportunity to remove himself from Housing Court," emphasizing the limited time that passed between his initial encounter with the deputies and his arrest.

Assuming application of the restatement principle, we disagree that it negates Bragg's guilt. Although the relevant time span was limited, Bragg had adequate time to leave on his own volition. Bragg's interaction with the deputies lasted approximately two minutes. Both deputies testified that they asked Bragg to leave multiple times before Deputy Shulte initiated the escort hold. The record shows that Bragg's continued presence after the deputies ordered him to leave was due to his volitional refusal, and not lack of opportunity.

Bragg argues that "when the deputies placed [him] in an escort hold, they deprived him of the opportunity to leave on his own" and that "[i]t is axiomatic that an individual who is physically restrained, *i.e.*, seized, by law enforcement, would not be free to leave." This argument is unpersuasive because even if Deputy Shulte's escort hold was a seizure, nothing prevented Bragg from leaving before the deputy initiated the hold. Moreover, the deputies did not arrest Bragg for trespass until after he physically resisted the deputies' attempt to remove him from the government center, by planting his feet on the ground and "dragging his feet on the ground . . . like dead weight." It was only after these deliberate refusals that Bragg was arrested.

Because the jury could reasonably conclude that Bragg was guilty of trespass based on this record, we do not disturb the verdict.

II.

"If the jury returns a verdict of guilty . . . a motion for a judgment of acquittal may be brought within 15 days after the jury is discharged." Minn. R. Crim. P. 26.03, subd. 18(3)(a). A postverdict motion for judgment of acquittal "is properly denied where the evidence, viewed in the light most favorable to the State, is sufficient to sustain a conviction." *State v. Simion*, 745 N.W.2d 830, 841 (Minn. 2008). "A motion for acquittal is procedurally equivalent to a motion for a directed verdict." *State v. Slaughter*, 691 N.W.2d 70, 74 (Minn. 2005). A motion for a directed verdict presents a question of law regarding the sufficiency of the evidence. *M.W. Ettinger Transfer & Leasing Co. v. Schaper Mfg., Inc.*, 494 N.W.2d 29, 34 (Minn. 1992). This court reviews questions of law de novo. *Harrison v. Comm'r of Pub. Safety*, 781 N.W.2d 918, 920 (Minn. App. 2010). Thus, Bragg's appeal of the denial of his posttrial motion for judgment of acquittal requires us to conduct a de novo review of the sufficiency of the state's evidence. *See State v. McCormick*, 835 N.W.2d 498, 506 (Minn. App. 2013) ("[A]ppeal of the denial of [a] posttrial motion for judgment of acquittal . . . requires us to conduct a de novo review of the sufficiency of the state's circumstantial evidence."), *review denied* (Minn. Oct. 15, 2013).

Bragg argues that the "district court clearly erred in concluding that [he] lacked a claim of right to be present in [the government center] prior to the deputies' revocation of consent," arguing that "[t]he court erred in concluding that members of the clerk's office revoked [his] express license to be in the courthouse that morning" and that "no evidence supports the conclusion that courthouse staff, *i.e.*, the clerk's office employees, had legal

authority to revoke [his] license to be present in the courthouse." Because this court's review is de novo, the challenged conclusions are irrelevant. Moreover, as discussed in section I of this opinion, the evidence is sufficient to show that the deputies revoked Bragg's license to be present in the government center and it is undisputed that the deputies had authority to do so. Whether the clerks had such authority is irrelevant.

Bragg next argues that the "district court committed clear error in making and relying on findings of fact regarding [Bragg's] conduct that were contradicted by the jury's acquittal on disorderly conduct." Bragg argues that the evidence cannot be viewed as supporting a finding that Bragg engaged in "truculent" and loud behavior because such a finding directly contradicts the jury's not guilty verdict on the disorderly conduct charge. He further argues that his "purportedly disorderly conduct" "is irrelevant to the question of whether [he] should face liability for trespass." Once again, because this court's review is de novo, the district court's findings supporting its denial of Bragg's motion for judgment of acquittal are irrelevant.

Moreover, "[a] disruptive and hostile individual has no legal right to remain on the premises after being ordered to leave by a police officer." *Occhino*, 572 N.W.2d at 319. That principle is not limited to situations in which the disruptive and hostile conduct satisfies the statutory definition of disorderly conduct. *See id.* (stating principle without limiting it to behavior that constitutes criminal disorderly conduct).

The trial evidence established that Bragg was disruptive and hostile. Y.W. testified that Bragg was "agitated, very loud, and wouldn't accept the information he was being given." J.H. testified that Bragg yelled at all of the clerks in the clerks' office and told her

that she "needed to know [her] place." Deputy Heilman testified that Bragg was disruptive, would not listen to the deputies, talked over them, and became agitated when they repeatedly asked him to leave. Deputy Shulte testified that Bragg refused to leave when asked, assumed a fighting stance, and resisted the deputies' attempt to escort him from the building. Under *Occhino*, Bragg's behavior is probative of the trespass offense, regardless of Bragg's acquittal of the disorderly conduct offense. And the behavior supports the jury's guilty verdict on the trespass offense because it shows that Bragg's claim of right ended when the officers directed him to leave the government center based on the behavior.

Lastly, Bragg argues that the "district court improperly discounted [his] First Amendment[] right of access to courthouses and court proceedings." He notes that the "United States Supreme Court has long recognized that courthouses are generally open to members of the public and the press and that access is a right protected by the First Amendment," citing *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 508, 104 S. Ct. 819, 821 (1984), *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 603-04, 102 S. Ct. 2613, 2618-19 (1982), and *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 600, 100 S. Ct. 2814, 2840 (1980). Bragg argues:

> Notably, these cases address the right of the public and the press to access the court and attend court proceedings. Here, by contrast, [he] was present not simply as a member of the general public but as an actual party to civil proceedings taking place in the courthouse. His First Amendment interest was even more compelling than those of the general public or the press in the above-cited cases and should not have been so quickly and cavalierly disregarded by the sheriff's deputies and the district court. This First Amendment interest serves as an independent basis to conclude that [he] had a bona fide claim of right to be in the [courthouse].

We reject Bragg's First-Amendment-based claim of right given the particular facts of this case. It is undisputed that Bragg's scheduled court hearing had ended, and the courtroom had been locked, when the deputies directed him to leave the government center. Thus, the command to leave did not infringe on Bragg's First Amendment right to attend the hearing in his eviction case. Although Bragg retained a right of access to the government center as a member of the general public, that right ended when the deputies directed him to leave the building based on his disruptive and hostile behavior. *See Occhino*, 572 N.W.2d at 319.

In sum, because the evidence was sufficient to sustain Bragg's conviction of trespass, the district court did not err by denying his postverdict motion for judgment of acquittal.

III.

Bragg argues that he is entitled to appellate relief because the prosecutor suggested that he was guilty of trespass because he was late for his eviction hearing. A prosecutor's misstatement of law can constitute misconduct. *See, e.g.*, *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002) (concluding that "the prosecutor engaged in misconduct when he misstated the state's burden of proof and when he misstated the law on the issue of abandonment"). Although Bragg alleges such misconduct on appeal, he did not object to the alleged misconduct in district court. We therefore apply the modified plain-error analysis set forth in *State v. Ramey*. 721 N.W.2d 294, 302 (Minn. 2006). The burden is "on the nonobjecting defendant to demonstrate both that error occurred and that the error was plain." *Id.* A plain error is one that "contravenes case law, a rule or standard of

conduct." *Id.* The burden then shifts to the state to prove that there is no reasonable likelihood that the absence of the misconduct would have had a significant effect on the jury's verdict. *Id.* If a reviewing court concludes that any prong of the plain-error analysis is not satisfied, the court need not consider the other prongs. *State v. Brown*, 815 N.W.2d 609, 620 (Minn. 2012).

Bragg argues that the state plainly erred by repeatedly suggesting that, "since [Bragg] was late to his hearing, he had no right to be in the courthouse that morning." He quotes the following statement by the prosecutor as an example:

> That's why, ladies and gentlemen, the defendant acted without a claim of right. If the case had not been called yet, he could have gotten there and he would absolutely have a claim of right. But without a case being called and it being over, that claim of right ends.

Bragg argues that the prosecutor misstated the law because trespass requires refusal to leave on the demand of the lawful possessor and he "had not yet received a demand by a lawful possessor – he was simply running late to his hearing." Bragg further argues that the alleged misstatement was "critical" and "appeared to confuse the jury into believing [his] license to be in the courthouse that morning was revoked immediately upon the end of the eviction hearing."

In assessing an allegation of prosecutorial misconduct during closing arguments, this court reviews "the closing argument as a whole, rather than just selective phrases or remarks that may be taken out of context or given undue prominence." *State v. Walsh*, 495 N.W.2d 602, 607 (Minn. 1993). Here, the alleged misstatement was made in the following context:

> But [Bragg] asserted a false claim. He said that he had a right to see the referee, that he had court. But the answer was, no, he didn't. That court was scheduled for 8:30 and [the referee] made the decision to call the case and issue the order. At that point, the case is done. And so there are not reasonable grounds for the defendant's belief.
>
> That's why, ladies and gentlemen, the defendant acted without a claim of right. If the case had not been called yet, he could have gotten there and he would absolutely have a claim of right. But with a case being called and it being over, *that claim of right ends*.
>
> So ladies and gentlemen, the defendant acted without a claim of right. He did not have reasonable grounds for his belief. He asserted a false claim that he had a right to see the referee when, in fact, he did not. That's why the third element is proven beyond a reasonable doubt.

(Emphasis added.)

This context shows that the prosecutor argued that any claim of right based on Bragg's attendance at his eviction hearing ended when the hearing ended. The prosecutor did not broadly argue—as Bragg suggests—that Bragg did not have any other claim of right that would have justified his presence at the government center, such as a right of access as a member of the general public. When the challenged remarks are considered in context, we are not persuaded that the prosecutor misstated the law.

Moreover, the state persuasively argues that there is no reasonable likelihood that the alleged misstatement had a significant effect on the jury's verdict. This court has previously held that evidence of prosecutorial misconduct is not prejudicial when the evidence supporting the verdict is strong. *See, e.g.*, *State v. Ivy*, 902 N.W.2d 652, 663 (Minn. App. 2017), *review denied* (Minn. Dec. 19, 2017). Also, a prosecutor's misstatement of law is less likely to play a substantial part in influencing a jury to convict

if the district court correctly instructed the jury. *See State v. Trimble*, 371 N.W.2d 921, 926-27 (Minn. App. 1985) (concluding that "the prosecutor's misstatement of the standard [did] not require reversal because the [district] court fully instructed the jury on [the] presumption of innocence"), *review denied* (Minn. Oct. 11, 1985).

As discussed in sections I and II of this opinion, there is strong evidence of guilt based on Bragg's refusal to comply with the deputies' demand that he leave the government center based on his disruptive and hostile behavior. Moreover, the district court instructed the jury regarding claims of right stating:

> A bona fide claim of right exists only when the defendant [was] acting in good faith, as opposed to asserting a false claim. In order to find that the defendant had a bona fide claim of right, you must find the defendant believed he or she had a right to enter.

The court also instructed the jury, "If an attorney's argument contains any statement of the law that differs from the law I give you, disregard the statement." This court "presume[s] that jurors follow the [district] court's instructions." *State v. Martin*, 614 N.W.2d 214, 227 (Minn. 2000).

Because Bragg has not shown error that is plain and the state has shown that the alleged error did not have a significant effect on the jury's verdict, he is not entitled to relief on his prosecutorial-misconduct claim.

Conclusion

Bragg's arguments heavily rely on an assertion that he was convicted of trespass because he arrived late for his eviction hearing at the government center. We categorically reject that assertion. Although Bragg did not appear on time for his hearing, he was not

convicted of trespass based on his late arrival. To be clear, Bragg was convicted of trespass because he refused to comply with the deputies' authorized directives to leave the government center, which were based on Bragg's disruptive and hostile behavior. Although Bragg had a right to be present in the government center, both as a litigant and as a member of the general public, that right ended when the deputies directed him to leave based on his behavior.

Affirmed.