

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-150082
Plaintiff-Appellee,	:	TRIAL NO. 14CRB-19802
vs.	:	<i>JUDGMENT ENTRY.</i>
KHLAYER GRAVES,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Khlayer Graves was charged with operating a motor vehicle while intoxicated (“OVI”) and obstructing official business. Following a bench trial, Graves was acquitted of the OVI charge but found guilty of obstruction. The trial court sentenced Graves to 90 days in jail, suspended the 90 days, and placed her on 11 months of community control. Graves was also ordered to pay a \$300 fine and court costs. She now appeals her conviction.

In her first assignment of error, Graves contests the sufficiency of the evidence underlying her conviction. To reverse a conviction for insufficient evidence, the reviewing court must be persuaded, after viewing all the evidence in the light most favorable to the prosecution, that no rational trier of fact could have found the essential

elements of the crime proven beyond a reasonable doubt. *State v. Waddy*, 63 Ohio St.3d 424, 430, 588 N.E.2d 819 (1992).

R.C. 2921.31(A)(1) defines obstructing official business as follows:

No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties.

A review of the record convinces us that there was sufficient evidence presented to convict Graves of obstructing official business. Graves, who had been informed that she was being detained for an OVI investigation and was not free to leave, told police officers that since she was not under arrest she was going to leave and walked away. A police officer ordered her to stop, but when she refused and continued to walk away, the officer was forced to follow Graves ten feet and physically detain her.

This court has previously held in *State v. Lohaus*, 1st Dist. Hamilton No. C-020444, 2003-Ohio-777, ¶ 12, that a defendant's "actions in fleeing across several lawns after being told to stop – and in forcing the investigating officer to physically restrain [the defendant] fell squarely within [R.C. 2921.31's] proscriptions." See *State v. Davis*, 140 Ohio App.3d 751, 753, 749 N.E.2d 322 (1st Dist.2000) (defendant committed the crime of obstructing official business when he failed to heed an officer's order to stop, and instead quickened his pace). Similar to the defendants in *Lohaus* and *Davis*, Graves refused to stop at the request of the police officer and purposefully walked away from him even though she was aware she was being detained for an OVI investigation and did not have the privilege to leave.

But Graves argues that because the state did not show that she had caused “a substantial stoppage” in the officer’s duties, she cannot be found guilty of obstruction. While this court has held that “ ‘there must be some substantial stoppage of the officer’s progress before one can be hampered or impeded, we have declined to state what period of time constitutes a ‘substantial stoppage.’ ” *See State v. Collier*, 1st Dist. Hamilton No. C-140576, 2015-Ohio-3891, ¶ 9, quoting *State v. Wellman*, 173 Ohio App.3d 494, 2007-Ohio-2953, 879 N.E.2d 215, ¶ 17 (1st Dist.). Additionally, we have determined that the state does not need to show that a defendant has actually prevented an officer “from performing his duty to investigate * * *, just that [the defendant] had acted with the purpose to hamper or impede [the officer’s] performance of that duty.” *See State v. Shoemaker*, 1st Dist. Hamilton No. C-140724, 2015-Ohio-4646, ¶ 14. Here, Graves clearly acted with the purpose to impede the officer in completing his investigation, when she walked away after being told that she was being detained for an OVI investigation, and then refused to obey the officer’s request to stop. *See State v. Brickner-Latham*, 3d Dist. Seneca No. 13-05-06, 2006-Ohio-609, ¶ 28 (the defendant’s “persistence in disregarding [the officer’s] requests to stop was sufficient evidence for a rational trier of fact to conclude that [the defendant] acted with the specific intent to prevent, obstruct, or delay [the officer’s] lawful duties”).

Because there was sufficient evidence underlying Graves’s conviction, the first assignment of error is overruled.

In her second assignment of error, Graves maintains that her trial counsel was ineffective for failing to move for a Crim.R. 29 acquittal at the close of the state’s case.

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To prevail on her claim of ineffective assistance of counsel, Graves had to show that but for counsel's deficient performance, the outcome would have been different. *See State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraph three of the syllabus.

The failure to assert a Crim.R. 29 motion is not, per se, ineffective assistance of counsel. *See Defiance v. Cannon*, 70 Ohio App.3d 821, 826-827, 592 N.E.2d 884 (3d Dist.1990) (holding trial counsel's failure to make a Crim.R. 29 motion for an acquittal is not ineffective assistance of counsel where such a motion would have been futile). The denial of a motion for an acquittal is subject to the same standard of review as a sufficiency claim. *State v. Williams*, 74 Ohio St.3d 569, 576, 660 N.E.2d 724 (1996). Because Grave's conviction was supported by sufficient evidence, a Crim.R. 29 motion would not have been successful, and thus, counsel was not ineffective for failing to make such a motion.

Accordingly, the second assignment of error is overruled, and the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., MOCK and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on December 16, 2015
per order of the court _____.
Presiding Judge