

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 23, 2019

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2019AP285

Cir. Ct. No. 2018TR4379

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

GRANT COUNTY,

PLAINTIFF-RESPONDENT,

V.

DALE T. ANDREJCZAK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Grant County:
CRAIG R. DAY, Judge. *Affirmed.*

¶1 KLOPPENBURG, J.¹ The circuit court found Dale Andrejczak guilty of obstructing an officer following a trial to the court. Andrejczak appeals,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

pro se, arguing that the evidence was insufficient to support the finding of guilt. For the reasons that follow, I affirm.

BACKGROUND

¶2 The obstruction charge stemmed from an incident outside of a bar in Platteville shortly after midnight on a Saturday night. Grant County issued a citation to Andrejczak for obstructing an officer, and the case was tried to the circuit court. At the trial, Grant County Deputy Duane Jacobson and Andrejczak, appearing without counsel, testified.

¶3 Jacobson testified as follows. On the night in question, Jacobson was field training Deputy Andrew Nelson. A bar bouncer approached them on the sidewalk outside the bar and expressed concerns about a patron's age. Nelson initiated an investigation by speaking with the patron while Jacobson observed from approximately five feet away.

¶4 Andrejczak walked between the deputies and approached the patron, stopping within one to two feet from her. Andrejczak then turned toward the patron and told her not to tell the deputies anything. The patron then became confused and hesitant to speak with Nelson, in contrast to her prior cooperative demeanor.

¶5 As Andrejczak then walked away, Jacobson called out to him to stop and asked him why he said what he did to the patron. Andrejczak responded that he did not say anything to her.

¶6 Andrejczak testified that there were "lots of people" outside the bar and "it's not unreasonable that I was having a conversation with somebody and

that [the deputies] overheard it.” He testified that he was not speaking to the patron, but to a friend about ten feet ahead of him.

¶7 On rebuttal, Jacobson testified that there was no individual with, or ten feet ahead of, Andrejczak when Jacobson talked to Andrejczak, and “nobody else came back or was by [Andrejczak] or with him when he left.”

¶8 The circuit court found Jacobson’s testimony credible and Andrejczak’s testimony not credible, and found Andrejczak guilty as charged.

DISCUSSION

¶9 As stated, Andrejczak argues that the evidence was insufficient to support the circuit court’s finding that Andrejczak was guilty of obstructing an officer.

¶10 An appellate court may not reverse a conviction based on insufficiency of the evidence “unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Poellinger*, 153 Wis. 2d 493, 501, 451 N.W.2d 752 (1990).

¶11 The pertinent statute states: “[W]hoever knowingly resists or obstructs an officer while such officer is doing any act in an official capacity and with lawful authority is guilty of a Class A misdemeanor.” WIS. STAT. § 946.41(1). Our supreme court has described this obstructing crime as consisting of the following elements:

First, that the defendant (*resisted*) (*obstructed*) an officer.

Second, that the officer was doing an act in his [or her] official capacity and with lawful authority.

Third, that the defendant (*resisted*) (*obstructed*) the officer, knowingly; that is, that the defendant knew or believed that he [or she] was (*resisting*), (*obstructing*) the officer while the officer was acting in his [or her] official capacity and with lawful authority.

State v. Lossman, 118 Wis. 2d 526, 535, 348 N.W.2d 159 (1984) (citation and internal quotation marks omitted).

¶12 Andrejczak does not challenge the sufficiency of the evidence specifically as to any of these three elements. Rather, he makes the general assertion that his conversation could not reasonably be considered to constitute obstruction as defined by these elements. His reply brief clarifies that he is arguing that the patron was “free to remain silent” regardless of what Andrejczak may have said, that the circuit court erroneously disbelieved his testimony that he did not say anything to the patron, and that just because Jacobson did not see the other person with whom Andrejczak was speaking does not mean that that person “wasn’t in the general area.”

¶13 These arguments amount to little more than discussing reasons why the circuit court should have believed Andrejczak and not Jacobson. However, this court defers to circuit courts on credibility determinations. *See State v. Randall*, 2011 WI App 102, ¶14, 336 Wis. 2d 399, 802 N.W.2d 194 (we defer to the circuit court’s credibility determinations). “When the [circuit] court acts as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and of the weight to be given to each witness’s testimony.” *Lessor v. Wangelin*, 221 Wis. 2d 659, 665, 586 N.W.2d 1 (Ct. App. 1998).

¶14 Andrejczak asserts that the circuit court was inconsistent in assessing the credibility of Andrejczak’s testimony, noting that the court said that Andrejczak’s “version of the event [was] plausible.” However, the court then explained that it did not believe Andrejczak’s version based both on his demeanor and on Jacobson’s testimony. This court may not disregard a circuit court’s credibility finding simply because what the defendant said might make sense. *See State v. Daniels*, 117 Wis. 2d 9, 17, 343 N.W.2d 411 (Ct. App. 1983) (“An appellate court will only substitute its judgment for that of the trier of fact [regarding credibility determinations when the evidence is] inherently or patently incredible—that kind of evidence which conflicts with nature or with fully established or conceded facts.”). In sum, Andrejczak’s arguments directed at the circuit court’s credibility findings fail.

¶15 Andrejczak appears to make two additional arguments that I reject as follows. First he appears to argue that he cannot be punished for exercising his First Amendment right to carry on a conversation. However, he does not support this apparent challenge to the constitutionality of either the statute or his citation with any reference to legal authority. Accordingly, I do not consider this argument further. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (“Arguments unsupported by references to legal authority will not be considered.”).

¶16 Second, Andrejczak asserts, without any explanation, that his case is similar to that in *State v. Hamilton*, 120 Wis. 2d 532, 356 N.W.2d 159 (1984). The State responds that *Hamilton*, which held that refusing to provide identifying information is not, in and of itself, obstructing, has no bearing on this case, which involves, in the State’s words, “an interjection of information to obstruct.” Andrejczak does not address the State’s distinction of *Hamilton* in his reply brief,

and, therefore, I deem him to have conceded the point. *See United Coop. v. Frontier FS Coop.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (appellant's failure to respond in reply brief to an argument made in response brief may be taken as a concession).

CONCLUSION

¶17 For the reasons stated, I conclude that Andrejczak fails to show that the evidence was insufficient to support the circuit court's finding of guilt. Accordingly, I affirm.

By the Court.—Judgment affirmed.

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

