Order

Michigan Supreme Court
Lansing, Michigan

October 28, 2015

150203

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 150203
COA: 315170
Emmet CC: 12-003727-FH

KIMIKO LEE UYEDA,
Defendant-Appellant.

_____/

By order of March 31, 2015, the application for leave to appeal the August 21, 2014 judgment of the Court of Appeals was held in abeyance pending the decision in *People v Lockridge* (Docket No. 149073). On order of the Court, the case having been decided on July 29, 2015, 498 Mich 358 (2015), the application is again considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE in part the judgment of the Court of Appeals, and we REMAND this case to the Emmet Circuit Court to determine whether the court would have imposed a materially different sentence under the sentencing procedure described in *Lockridge*. On remand, the trial court shall follow the procedure described in Part VI of our opinion. If the trial court determines that it would have imposed the same sentence absent the unconstitutional constraint on its discretion, it may reaffirm the original sentence. If, however, the trial court determines that it would not have imposed the same sentence absent the unconstitutional constraint on its discretion, it shall resentence the defendant. In all other respects, leave to appeal is DENIED, because we are not persuaded that the remaining question presented should be reviewed by this Court.

We do not retain jurisdiction.

d1019

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 28, 2015

Clerk

STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 21, 2014
v	No. 315170 Emmet Circuit Court
KIMIKO LEE UYEDA, Defendant-Appellant.	LC No. 12-003727-FH

Before: SAAD, P.J., and OWENS and K. F. KELLY, JJ.

PER CURIAM.

Defendant appeals her jury convictions of common-law obstruction of justice,[1] and three counts of filing a false police report under MCL 750.411a(1)(b). For the reasons stated below, we affirm.

I. FACTS AND PROCEDURAL HISTORY

In September 2012, defendant and her ex-husband had a heated phone conversation over defendant's refusal to sign a document that would allow their son's school to administer his medication. Defendant eventually agreed to sign the form, and her ex-husband dropped it off at her house.

In a 911 call after her ex-husband's visit, defendant hysterically claimed that he beat her, shoved her to the ground, and attempted to choke her with a headphone cord. The police arrested her ex-husband, who told two officers that no such altercation had occurred—and that he merely dropped off the release document at defendant's boyfriend's house and left. At the hospital, the officers spoke with defendant (whose injuries were very minor in light of the attack she supposedly suffered) about inconsistencies in her story. Defendant then told an officer that

[1] MCL 750.505 mandates that: "Any person who shall commit any indictable offense at the common law, for the punishment of which no provision is expressly made by any statute of this state, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 5 years or by a fine of not more than $10,000.00, or both in the discretion of the court."

her ex-husband was innocent, and that she had actually tripped outside her home and hit her head. She memorialized this version of events in a signed statement.

The prosecution subsequently charged defendant with obstruction of justice under MCL 750.505, and three counts of filing a false police report under MCL 750.411a(1)(b). At trial, defendant changed her story once more, and testified that she actually was assaulted by her ex-husband, but erroneously recanted this version of events at the hospital because she was nervous and confused.

Obviously, the jury did not believe defendant's testimony and thus convicted her of both charges. On appeal, defendant claims that: (1) the convictions violate the prohibition against double jeopardy; and (2) the trial judge unconstitutionally increased her sentence by engaging in judicial factfinding.

II. ANALYSIS[2]

Both the United States and Michigan Constitutions prohibit double jeopardy, which involves: "(1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense." *People v Gibbs*, 299 Mich App 473, 488–489; 830 NW2d 821 (2013). To determine whether a defendant is punished twice for the same offense, Michigan courts apply the *Blockburger*[3] test. *People v Nutt*, 469 Mich 565, 576; 677 NW2d 1 (2004). *Blockburger* focuses on the statutory elements of the charged offenses. *Id.* If each offense requires proof of a fact that the other does not, the prohibition against double jeopardy is not violated, "notwithstanding a substantial overlap in the proof offered to establish the crimes." *Id.* In addition, to constitute double jeopardy, the two offenses with which a defendant is charged must be part of the same "transaction or incident." *People v Ford*, 262 Mich App 443, 448; 687 NW2d 119 (2004). "There is no violation of double jeopardy protections if one crime is complete before the other takes place, even if the offenses share common elements or one constitutes a lesser offense of the other." *People v Lugo*, 214 Mich App 699, 708; 542 NW2d 921 (1995).

Here, defendant incorrectly asserts that her convictions for obstruction of justice and filing a false police report violate the prohibition against double jeopardy because they are multiple punishments for the same offense. The two offenses are actually distinct, as demonstrated by the fact that "each [offense] requires proof of a fact that the other does not."

---

[2] Because defendant failed to raise her double-jeopardy claim in the trial court, it is not preserved for appellate review. *People v McGee*, 280 Mich App 680, 682; 761 NW2d 743 (2008). We review "an unpreserved claim that a defendant's double jeopardy rights have been violated for plain error that affected the defendant's substantial rights, that is, the error affected the outcome of the lower court proceedings. Reversal is appropriate only if the plain error resulted in the conviction of an innocent defendant or seriously affected the fairness, integrity, or public reputation of the judicial proceeding." *Id.* (Footnotes omitted.)

[3] *Blockburger v United States*, 284 US 299, 304; 52 S Ct 180; 76 L Ed 306 (1932).

Nutt, 469 Mich at 576. To obstruct justice at common law, a defendant must commit an act that interferes "with the orderly administration of justice,"[4] and specifically intend to interfere with the orderly administration of justice when he commits the act.[5] By contrast, to violate MCL 750.411a(1)(b), a defendant must "intentionally make[] a false report of the commission of a crime," "know[] the report is false," and the falsely reported crime must be a felony. MCL 750.411a(1)(b). And, as the prosecution notes, a defendant does not need specific intent to violate MCL 750.411a(1)(b)—all that is required is the general intent to make a false report, not a specific intent to achieve a particular result. See MCL 750.411a(1)(b); and *People v Lay*, 336 Mich 77, 82; 57 NW2d 453 (1953). Accordingly, defendant's appeal is without merit.[6]

Affirmed.

/s/ Henry William Saad
/s/ Donald S. Owens
/s/ Kirsten Frank Kelly

[4] *People v Meissner*, 294 Mich App 438, 454; 812 NW2d 37 (2011).

[5] *People v Tower*, 215 Mich App 318, 320–321; 544 NW2d 752 (1996).

[6] Regarding defendant's appeal of her sentence: as she acknowledges, the theory defendant uses to challenge the constitutionality of her sentence has been flatly rejected by our Court. Under Michigan's indeterminate sentencing scheme, judicial factfinding to score an offense "falls within the wide discretion accorded a sentencing court in the sources and types of evidence used to assist the court in determining the kind and extent of punishment to be imposed within limits fixed by law," and accordingly does not violate the Sixth Amendment. *People v Herron*, 303 Mich App 392, 405; 845 NW2d 533 (2013) (citations omitted). Defendant's protestations to the contrary thus have no merit. See MCR 7.215(C)(2).