

IN THE COURT OF APPEALS OF IOWA

No. 0-392 / 09-1438
Filed July 14, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

HOWARD GEORGE PARSONS,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Walter W. Rothschild, Judge (motion to suppress), and Joseph Moothart, District Associate Judge (trial).

Howard Parsons appeals following his conviction and sentence for possession of marijuana, third offense. **AFFIRMED.**

Thomas P. Frerichs of Frerichs Law Office, P.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Dustin Lies, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ. Tabor, J., takes no part.

DANILSON, J.

Howard Parsons appeals following his conviction and sentence for possession of marijuana, third offense, in violation of Iowa Code section 124.401(5) (2009). Parsons contends the district court erred in denying his motion to suppress because he was arrested for interference with official acts pursuant to Iowa Code section 719.1 without probable cause and, thus, evidence of his possession of marijuana was inadmissible as it was obtained by search incident to the arrest. For the following reasons, we affirm.

I. Background Facts and Proceedings.

Around 2:30 a.m. on February 28, 2009, the Waterloo Police Department received reports of a large fight with shots fired in the area of Fowler and Franklin Streets in Waterloo, Iowa. Officer Lindaman immediately responded to the call and observed vehicles leaving the area. He initiated a traffic stop in Parsons's driveway of one of the vehicles leaving the vicinity to investigate its potential involvement in the fight and shots fired report. Officer Yates soon arrived to assist with the stop.

Officers Lindaman and Yates emerged from their vehicles with their sidearms drawn, yelling at the five to six juvenile occupants of the vehicle to remain inside. Soon after, Parsons approached the officers from behind the garage of his residence adjacent to the driveway. Parsons began talking loudly to the officers and asking if his daughter was in the vehicle. The officers told Parsons to get back, at which point Parsons stopped walking toward the officers but continued to make comments to Officer Yates. Since Parsons's appearance

was diverting attention away from the shots fired investigation, Officer Lindaman called more officers to the scene to “address both problems.”

Upon returning to his residence, Parsons testified he called 911 to ask why the police were outside his house and if his daughter was in the vehicle. The 911 operator only told Parsons a shooting had occurred in the neighborhood, so Parsons said he “felt [he had a] duty to go outside and see if [his daughter] was in the car.” Parsons again went outside and approached the officers. He did not advance closer to the officers than the approximately ten to twenty-five feet he reached before, but the officers once again told him to get back and warned they would arrest him if he did not comply. Parsons became angry and began yelling at the officers about his daughter, his property, and the officers’ authority to request him to leave.

Before his arrest, Parsons returned to the scene for at least the third time and was told by Officer Yates and three or more officers to stay back. He was also told that he would be arrested if he did not comply. The in-car video in both Officer Lindaman’s and Yates’s vehicles captured most of the verbal exchanges between the officers and Parsons, but were not in position to videotape the corresponding conduct. Ultimately, Officer Yates arrested Parsons for interference with official acts in violation of Iowa Code section 719.1. Officer Yates told Parsons, “I told you to do something a half a dozen times, to do something, and you refused. That’s why you’re going to jail.” Upon a search incident to the arrest, the officers found a plastic bag containing one gram of marijuana in Parsons’s pocket. Soon after Officer Yates arrested Parsons, Officer Lindaman released the vehicle from the traffic stop without any citation.

On April 3, 2009, a trial information was filed against Parsons, charging him with possession of marijuana, second offense, in violation of Iowa Code section 124.401(5). On May 11, 2009, Parsons filed a motion to suppress the evidence seized from him incident to his arrest for interference with official acts, alleging there was no probable cause for his arrest and, therefore, the search violated the protections of the Fourth Amendment to the United States Constitution and article 1, section 8 of the Iowa Constitution against unreasonable search and seizure.

On June 22, 2009, a hearing was held on Parsons's motion to suppress.

The district court denied the motion, finding:

[T]he defendant's repeated appearance in the immediate vicinity of an ongoing police investigation of a reported shooting after being ordered on at least three or four occasions to leave the scene constituted a violation of Section 719.1 Code in that it clearly hindered and impeded an ongoing investigation of reported shooting in the vicinity by uniformed police officers.

The district court then ruled that since the police had probable cause to arrest Parsons for interference with official acts, they were authorized to perform the pat-down search leading to the discovery of the marijuana.

On June 25, 2009, an amended trial information was filed against Parsons, charging him with possession of marijuana, third offense, in violation of Iowa Code section 124.401(5).¹ Following a bench trial, the district court found Parsons guilty of possession of marijuana, third offense. Parsons received a two-year suspended sentence with two years probation, a suspended \$625 fine,

¹The original complaint listed all three prior convictions, but charged violation of marijuana, second offense, instead of third offense, because the wrong template was used to prepare the trial information.

and a 180-day driver's license suspension. The State later agreed to dismiss the charge against Parsons for interference with official acts. Parsons now appeals.

II. Scope and Standard of Review.

We review a district court's denial of a motion to suppress involving constitutional claims de novo. *State v. Feregrino*, 756 N.W.2d 700, 703 (Iowa 2008). We must "make an independent evaluation of the totality of the circumstances as shown by the entire record." *State v. Simmons*, 714 N.W.2d 264, 271 (Iowa 2006) (quoting *State v. Turner*, 630 N.W.2d 601, 606 (Iowa 2001)). We consider evidence presented at the suppression hearing and evidence introduced during trial. *State v. Crawford*, 659 N.W.2d 537, 541 (Iowa 2003). Although we give deference to the district court's findings of fact due to its opportunity to assess the credibility of witnesses, we are not bound by such findings. *Id.*

III. Discussion.

The Fourth Amendment to the United States Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Evidence obtained in violation of the Fourth Amendment is inadmissible. *State v. Freeman*, 705 N.W.2d 293, 297 (Iowa 2005). Through the Fourteenth Amendment to the United States Constitution, the Fourth Amendment is binding on the states. *State v. Carter*, 696 N.W.2d 31, 37 (Iowa 2005). The Iowa Constitution additionally assures "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated." Iowa Const. art. I, § 8.

A search executed without a warrant is per se unreasonable unless it falls into a recognized exception to the warrant requirement. *State v. Christopher*, 757 N.W.2d 247, 249 (Iowa 2008). It is the State's burden to prove by a preponderance of the evidence that a recognized exception applies, and an officer's conduct is assessed with an objective standard. *Freeman*, 705 N.W.2d at 297. One recognized exception is a "search incident to a lawful arrest." *Christopher*, 757 N.W.2d at 249 (quoting *State v. Naujoks*, 637 N.W.2d 101, 107 (Iowa 2001)).

Under Iowa Code section 804.7(3), an officer may execute a warrantless arrest if the officer has reasonable grounds to believe an indictable public offense has been committed, and the person arrested committed it.² Since the reasonable ground requirement is equivalent to the probable cause standard, probable cause that an indictable offense has been committed must exist before an officer may execute a warrantless arrest under section 804.7(3). *Freeman*, 705 N.W.2d at 298.

Probable cause exists when "the facts and circumstances within the arresting officer's knowledge would warrant a person of reasonable caution to believe that an offense is being committed." *State v. Ceron*, 573 N.W.2d 587, 592 (Iowa 1997). Probable cause does not need to be strong enough to sustain a guilty conviction, but must rise above mere suspicion. *Id.* If probable cause exists, a search of the person arrested is lawful. *Freeman*, 705 N.W.2d at 298.

² Neither party argues the warrantless arrest occurring on the premises of the defendant's home may require the State to prove exigent circumstances in addition to probable cause. See *State v. Legg*, 633 N.W.2d 763, 771-73 (Iowa 2001) (addressing both probable cause and exigent circumstances to enter defendant's garage in order to arrest defendant for interference with official acts).

We conclude probable cause supported Parsons's arrest for interference with official acts pursuant to Iowa Code section 719.1, which provides:

- (1) A person who knowingly resists or obstructs anyone known by the person to be a peace officer . . . in the performance of any act which is within the scope of the lawful duty or authority of that officer . . . commits a simple misdemeanor.
- (2) The terms "resist" and "obstruct", as used in this section, do not include verbal harassment unless the verbal harassment is accompanied by a present ability and apparent intention to execute a verbal threat physically.

Based on the facts surrounding the arrest, and consistent with the district court's ruling, Parsons's conduct did not constitute "resisting" a peace officer in his lawful duties. The issue, therefore, is whether the officers had probable cause to arrest Parsons for "obstructing" them in their lawful duties.

The purpose behind the interference with official acts statute is to "enable officers to execute their peace-keeping duties calmly, efficiently, and without hindrance." *State v. Buchanan*, 549 N.W.2d 291, 294 (Iowa 1996). The language in section 719.1 was chosen to suggest violations needed to involve active interference rather than mere failure to cooperate or passive objections. *State v. Smithson*, 594 N.W.2d 1, 2 (Iowa 1999) (finding the defendant did not interfere with official acts when he ignored an officer's single request to turn the music down). Our court has found that "'obstruct' is broader than 'resist,' and includes putting obstacles in the path of officers completing their duties." *State v. Hauan*, 361 N.W.2d 336, 339 (Iowa Ct. App. 1984). The ultimate question, therefore, in determining whether a defendant obstructed a peace officer in violation of section 719.1, is whether the defendant's actions hindered officials in their duties. *Id.*

We conclude the officers had reasonable grounds to conclude that Parsons's actions constituted knowing obstruction of a peace officer within the meaning of section 719.1. Parsons hindered and impeded the officers' ability to safely and efficiently handle the traffic stop. He repeatedly approached the officers as they conducted a possible felony traffic stop involving a weapon, shots fired, and a large fight. Officer Lindaman testified about the effect Parsons's repeated appearance at the scene of his ongoing investigation had by stating Parsons's conduct kept

diverting [his] attention from the vehicle, which [he] didn't know [if it] had a weapon in it or not. [He] had no clue. And [Parsons], which [Officer Lindaman] didn't know who he was or if he had a weapon or if he was going to shoot [him]. [He] had no clue. It was a situation as you can hear on the video that it was pretty hectic at first.

Officer Lindaman further testified Parsons's continual reappearance made it hard for him to speak to and be heard by the juveniles in the vehicle. Additionally, Parsons's conduct required Officer Lindaman to call in more officers for assistance due to the safety risk his conduct posed. Officer Lindaman stated he "was worried about [himself], Officer Yates and the other officers arriving on scene" because Parsons kept "diverting [his] attention away from a gun call and [his] traffic stop."

In contrast to *Smithson*, 594 N.W.2d at 3, where the court found the defendant's failure to abide by an officer's single request to turn down music did not constitute interference with official acts, Parsons refused to comply with the officers' request to back up from the scene at least three times, making the officers concerned for their safety. Therefore, Parsons's arrest is supported by

probable cause because a reasonable person could conclude he actively interfered with official duties, rather than merely failed to cooperate, and, thus, the search was reasonable.

Parsons further contends his actions constituted mere verbal harassment and, therefore, are exempted from the definition of “obstruct” pursuant to section 719.1(3), which excludes verbal harassment from constituting interference with official acts unless accompanied by ability and intention to execute the threats physically. However, Officer Yates did not arrest Parsons solely due to his comments toward the officers. Rather, Officer Yates arrested him for his repeated approaches to the scene of an ongoing investigation after being told to back up or be arrested. Officer Lindaman testified that “the sole reason why [Parsons] was arrested was because he failed to comply with our request initially, then our orders eventually because of the officer safety concerns.” Although Parsons’s yelling aided in obstructing the officers’ traffic stop, it was his repeated appearance in the vicinity of the stop that greatly hindered the officers’ ability to investigate the vehicle because of the resulting threats to officer safety from both Parsons and the juveniles in the vehicle.

For the above reasons, we affirm the district court’s denial of Parsons’s motion to suppress and uphold his conviction and sentence for possession of marijuana, third offense.

AFFIRMED.