

IN THE COURT OF APPEALS OF IOWA

No. 8-484 / 07-1994
Filed July 16, 2008

**IN THE INTEREST OF K.R.,
Minor Child,**

**K.R., Minor Child,
Appellant.**

Appeal from the Iowa District Court for Linn County, Russell G. Keast,
District Associate Judge.

K.R., a juvenile, appeals from the juvenile court's order adjudicating her
delinquent for committing the offense of interference with official acts.

REVERSED.

Deborah M. Skelton, Walford, for minor child.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Harold Denton, County Attorney, and Kelly Kaufman, Assistant County
Attorney, for appellee State.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

K.R., a juvenile, appeals from the juvenile court's order adjudicating her delinquent for committing the offense of interference with official acts in violation of Iowa Code section 719.1 (2007). We reverse.

I. Background Facts and Proceedings

K.R. was among a group of twenty to twenty-five people engaged in a loud and obscenity-laced confrontation outside of a Cedar Rapids residence on July 2, 2007. Because the police officer sent to investigate believed K.R. was especially belligerent and appeared to be an instigator of the confrontation, he told her to leave the area. After she repeatedly ignored the officer's orders to leave and continued to taunt or otherwise challenge other members of the group to a fight, she was taken into custody and referred to juvenile court authorities.

In a subsequently filed delinquency petition, the county attorney alleged K.R. committed the following delinquent act:

[K.R.] did, on or about the 2nd day of July, 2007, in Linn County, Iowa, in violation of Iowa Code [s]ection 719.1 of the 2007 Code of Iowa, commit the offense of Interference With Official Acts, to-wit: did interfere with the official acts of uniformed Cedar Rapids Police Officer Mikel Wombacher by disobeying the officer's lawful commands to leave the area of 1407 Washington Avenue SE, Cedar Rapids, Iowa, during an investigation of disorderly conduct activity.

In rebuttal argument, the county attorney summarized the State's theory of the crime in the following terms:

The officer indicated that he was there to disperse this disturbance. He specifically asked her – I counted at least five times to leave the area. Not only did she not leave, she continued to yell up at the people that started the altercation. She was yelling the F bomb. I think that those actions prevented other people from leaving

because she was inciting the whole crowd by her display of behavior.

The trial court's stated findings of fact entered at the conclusion of the trial on the merits of the delinquency petition include the following:

Well, I don't think it's an issue of whether she was causing everybody else to stay or encouraging them to stay. I think it's an issue that she received an order by an officer whose duties are to disperse disturbances, whose duties are the public order and the public calm, and she was ordered to leave numerous times. She refused to leave. That is an obstruction that does not require her to be encouraging everyone else to leave.

. . . So I think the evidence is clear that she obstructed the officer trying to disperse the crowd by being part of the crowd and not leaving herself. So I find that there's evidence beyond a reasonable doubt that she committed the delinquent act of interference with official acts in violation of Iowa Code section 719.1 on July 2nd, 2007,

As a result of these findings, K.R. was adjudicated a delinquent child and placed on probation, subject to the terms and conditions specified by the trial court.

On appeal, K.R. contends "the delinquency petition does not allege actions that would constitute the offense of interference with official acts as set forth in . . . [s]ection 719.1" and "there is insufficient evidence in the record to show she committed [this] offense . . . as set forth in . . . [s]ection 719.1."

II. Standard of Review

Juvenile delinquency proceedings are not criminal prosecutions but are special proceedings that serve as an ameliorative alternative to the criminal prosecution of children. *In re J.D.S.*, 436 N.W.2d 342, 344 (Iowa 1989). We review appeals from delinquency cases de novo. *In re G.J.A.*, 547 N.W.2d 3, 5 (Iowa 1996). Weight is given to the juvenile court's findings of fact, especially when considering the credibility of witnesses, but we are not bound by them. *In*

re J.D.F., 553 N.W.2d 585, 587 (Iowa 1996). Questions of both law and fact are subject to review. *In re D.L.C.*, 464 N.W.2d 881, 882 (Iowa 1991).

III. Timeliness of Appeal

We initially consider the State's claim that we lack jurisdiction because K.R.'s appeal was not timely filed. See Iowa R. App. P. 6.5(1) (appeal must be filed within thirty days of judgment or order appealed from). Although K.R.'s notice of appeal was filed on November 26, 2007, the 31st day following entry of the trial court's October 26 adjudicatory order, her appeal was nevertheless timely filed because the 30th day, November 25, fell on a Sunday. See Iowa Code § 4.1(34) ("In computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday.").

We affirm on this issue.

IV. The Merits

Section 719.1(1) provides in relevant part:

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.

"The purpose of criminalizing conduct that interferes with official police action 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) (emphasis added). Our supreme court has noted the language of this section was chosen because it conveys the idea of active interference. *State v. Smithson*, 594 N.W.2d 1, 2 (Iowa 1999). Passive conduct, such as failure to

cooperate, is the subject of section 719.2, *id.*, an offense with which K.R. was not charged.

The term “resist” has been interpreted as limited to obstructive conduct but not requiring actual violence or direct force; it is sufficient if the “person charged engaged in actual opposition to the officer through the use of actual or constructive force making it reasonably necessary for the officer to use force to carry out his [or her] duty.” *State v. Donner*, 243 N.W.2d 850, 854 (Iowa 1976). The term “obstruct” has been interpreted more broadly 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). Section 719.1(3) provides the terms “resist” and “obstruct” do not include verbal harassment, unless accompanied by the ability and apparent intent to execute the threat physically.

Contrary to the State’s argument, we do not believe the facts in this case fit the crime charged. At best, the evidence shows no more than K.R.’s disobedience or failure to cooperate with the officer’s instructions to leave the area of the group confrontation. *See, e.g., State v. Smithson*, 594 N.W.2d at 3 (mere failure to comply with officer’s instructions to turn music down insufficient to convict under 719.1). Moreover, the evidence of any resulting interference is also, at best, ambiguous. Like the court in *Smithson*, we conclude the State’s failure to prove K.R.’s disobedience was an active interference (or hindrance of) the officer’s performance of an act within the scope of his lawful duties requires reversal of K.R.’s adjudication as a delinquent child.

REVERSED.