IN THE COURT OF APPEALS OF IOWA

No. 8-930 / 08-0541
Filed February 4, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LEO JOHN SULLIVAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Dubuque County, Francis J. Lange, Judicial Magistrate, and Randal J. Nigg, Judge.

On discretionary review, defendant appeals from his simple misdemeanor conviction, following bench trial before a judicial magistrate, for interference with official acts. **AFFIRMED.**

Jeffrey L. Walters of Clemens, Walters, Conlon & Meyer, L.L.P., Dubuque, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, Ralph Potter, County Attorney, and Alisha A. Stach-Lorang, Assistant County Attorney, for appellee.

Heard by Mahan, P.J., and Miller and Doyle, JJ.

MAHAN, P.J.

Following a bench trial before a judicial magistrate, Leo J. Sullivan was convicted of interference with official acts, a simple misdemeanor, in violation of Iowa Code section 719.1(1) (2007). The conviction was affirmed on appeal to the district court. He sought discretionary review, contending the court misinterpreted the statute and that the evidence against him was insufficient to prove, beyond a reasonable doubt, that he interfered with official acts. We affirm.

I. Background Facts and Proceedings.

The Dubuque County Sheriff's Department attempted to serve Sullivan with original notice of a civil lawsuit twenty-nine times between July 18, 2007, and August 14, 2007. After several such attempts to serve Sullivan, on July 22, 2007, Sergeant Tom Rettinger called Sullivan to notify him of the lawsuit. Sullivan agreed to "stop down" to pick up the papers after an appointment with his attorney, at which time the Department set aside the task of attempting to serve him. However, Sullivan failed to follow through and did not pick up the papers. The sheriff's office thus made several more attempts to serve him at his home. When officers knocked on the door, no one answered. Several "door tags" (notices asking a person to contact the sheriff's department) were left at Sullivan's residence, and he did not respond to the tags.

On August 14, 2007, Deputy Harly Pothoff attempted to serve Sullivan, but no one came to the door. When Deputy Pothoff returned later that day, he noticed Sullivan's vehicle, which had been parked at the residence before, was gone. He put out an "attempt to locate" notice for Sullivan over the police radio.

An Asbury police officer stopped Sullivan's vehicle in a supermarket parking lot. Deputy Pothoff arrived on the scene. Sullivan admitted he had been attempting to avoid the service of process. Deputy Pothoff charged Sullivan with interfering with official acts.

On August 14, 2007, the State filed a criminal complaint charging Sullivan with interference with official acts, a simple misdemeanor. The complaint alleged Sullivan "[d]id knowingly interfere with the Official Acts of a uniformed officer acting under the color of law by knowingly and intentionally avoiding the service of civil papers."

Trial was held, and the presiding magistrate found Sullivan guilty. Sullivan appealed to the district court. The proceedings before the magistrate were not recorded or transcribed. After reviewing the magistrate's written notes regarding the testimony of the witnesses, the district court affirmed the defendant's conviction. The district court wrote:

> The crux of this appeal is whether the Defendant's failure to respond to the sheriff's request to contact the sheriff about the service (including not answering his residence door) falls within the definition of obstructing or hindering the sheriff deputies in the performance of their lawful duty.
>
> This Court agrees with the Magistrate's conclusion that the Defendant's failure to answer his door and/or voluntarily cooperate to allow the service of process amounts to knowing resistance or obstruction of 'the service or execution by an authorized person of any civil or criminal process . . .' [1]
>
> Obstruction has been held to be "hindering," with hindering being defined as "retarding" or "delaying." The Iowa Rules of Civil Procedure envision that particular defendants may attempt to avoid process and specifically provide alternatives to personal service when a party can demonstrate that the defendant or respondent is avoiding service or "keeps concealed with like intent." See for

[1] Quoting, in part, Iowa Code § 719.1.

> example Iowa Rule of Civil Procedure 1.310(8). The actions of the Defendant to keep himself concealed, which he admitted, were a knowing attempt to delay the service of process and thus the progress of the suit against him and constitute a violation of the statute. His conduct was an active interference and beyond a "failure to cooperate" as argued by the Defendant. Particularly on August 14 it is clear he was home and avoided the deputy who came to his home by concealing his presence when he refused to answer the door.

Sullivan filed an application for discretionary review, which our supreme court granted.

II. Discussion.

On appeal Sullivan contends his conviction violates his constitutional rights. We do not address this claim, however, as it was not raised or determined by the district court. "We may not consider an issue that is raised for the first time on appeal, even if it is of constitutional dimension." *State v. Webb*, 516 N.W.2d 824, 828 (Iowa 1994).

Sullivan next contends that Iowa Code section 719.1(1) requires a defendant use actual or constructive force in resisting or obstructing an officer in performing his duties. Sullivan misstates the law.

Interference with official acts under section 719.1(1) makes it unlawful for a person to "knowingly resist[ ] or obstruct[ ] 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. . . ." *Id.* Its purpose "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). To convict Sullivan of misdemeanor interference with official acts under its theory of the case, the State was required to prove that he "knowingly resist[ed] or obstruct[ed] the service or

execution by any authorized person of any civil . . . process." Iowa Code § 719.1(1). The crime is a general intent crime, the elements of which are (1) knowledge of the officer's status as a peace officer; (2) knowledge that the officer was acting within the scope of his lawful duty or authority; and (3) knowing resistance or obstruction of the officer in the performance of the act. *See Buchanan*, 549 N.W.2d at 293.

The use of actual or constructive force in resisting an officer violates section 719.1. *See State v. Donner,* 243 N.W.2d 850, 854 (Iowa 1976). The use of force, however, is not an essential element. In *State v. Brecunier,* 564 N.W.2d 365, 369-70 (Iowa 1997), the court upheld an interference with official acts conviction where the defendant twice obstructed the officer's sight by shining a high-powered flashlight in his eyes and hid the shotgun that the officer went over the fence to retrieve. The court found such action "interfered with officers engaged in official acts." *Brecunier*, 564 N.W.2d at 369.

Sullivan maintains the evidence against him is insufficient to prove, beyond a reasonable doubt, that he knowingly interfered with official acts. We review challenges to the sufficiency of the evidence for errors at law. *State v. Rohm,* 609 N.W.2d 504, 509 (Iowa 2000). We uphold a finding of guilt if substantial evidence supports the verdict. *Id.* Substantial evidence is evidence upon which a rational finder of fact could find a defendant guilty beyond a reasonable doubt. *Id.* We view the evidence in the light most favorable to the State but consider all of the evidence, not just that which supports the verdict. *State v. Jacobs,* 607 N.W.2d 679, 682 (Iowa 2000).

Sullivan argues that he committed no affirmative act to hinder or delay law enforcement "other than to exercise his rights of privacy by staying within his home." He points out that when he was stopped by the Asbury officer, he did not resist and civil process papers were ultimately served.

Our supreme court has discussed the language of the controlling statute, its legislative history, and the authorities which have interpreted the statute in *State v. Smithson*, 594 N.W.2d 1, 2-3 (Iowa 1999). There, the court noted that the language chosen conveys the idea of "active interference." *Smithson*, 594 N.W.2d at 2. The court ruled that a single failure to turn down music at the request of a police officer did not constitute a violation of the statute. *Id.* at 3.

While the Iowa Criminal Jury Instructions do not have the force of law, they are useful to the extent they reflect a consensus understanding of the meaning of legal terms. They instruct that "'[r]esist' means to oppose intentionally, interfere with or withstand" and "'[o]bstruct' means to hinder intentionally, retard or delay." Iowa Crim. Jury Instr. 1910.2. "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).

In *State v. Legg,* 633 N.W.2d 763, 772 (Iowa 2001), the court noted that the defendant's conduct in "speeding up her car, running a stop sign, driving to her home, and retreating into her garage," after an officer had started to pursue her with his lights activated gave the officer reasonable grounds to believe that defendant was knowingly obstructing the officer's lawful performance of his duty to issue her a ticket for her initial traffic offense. The court found that the

defendant's conduct actively interfered with the officer's issuance of a traffic ticket. *Legg*, 633 N.W.2d at 772.

In *State v. Lewis,* 675 N.W.2d 516, 526 (Iowa 2004), however, the court noted: "The mere act of quickly walking away from the officer and ignoring his directions to stop under these circumstances is not interference with official acts. These individuals were free to go about their business . . . without police interference."

> We are not saying police should not investigate situations they find suspicious. But here, the officers did not have to enter Lewis's backyard to investigate the crime of trespass. The officers could have first approached the front door and either rang the doorbell or knocked, in an attempt to contact Lewis to ask him if the individuals were on his premises with his permission.

Lewis, 675 N.W.2d at 526-27.

We believe *Smithson* and *Lewis* stand for the proposition that a single instance of mere failure to cooperate cannot serve as the basis for a charge of interference with official acts.

The sheriff's office is charged with carrying out "duties relating to the return of service in civil cases as provided in rule of civil procedure 1.308." *See* Iowa Code § 331.653(69). The interference with official acts statute is designed to "enable officers to execute their peace-keeping duties calmly, efficiently, and without hindrance." *Buchanan,* 549 N.W.2d at 294. The district court, in part, relied upon Sullivan's failure to answer his door in affirming the conviction. We do not believe that a failure to answer one's own door constitutes the type of "active interference" contemplated by the statute. Thus, if Sullivan's conduct was

merely a failure to answer his door, we would be inclined to reverse the conviction. However, Sullivan did not simply fail to answer his door.

Sullivan received a telephone call from Sergeant Rettinger and thus knew that the sheriff's office was attempting to serve him with notice of a lawsuit. Sullivan affirmatively misled the department by telling Sergeant Rettinger he would pick up those papers and then failed to do so. This affirmative act caused a delay of service of process. When stopped by Deputy Pothoff, Sullivan admitted he was avoiding service of process. Sullivan's actions constitute "putting obstacles in the path of officers completing their duties." *Hauan,* 361 N.W.2d at 339.

Based on the language of the statute, its legislative history, and the authorities that we have discussed, we conclude Sullivan's motion for directed verdict was properly denied. The judgment of the district court is affirmed.

AFFIRMED.