IN THE COURT OF APPEALS OF IOWA

No. 8-373 / 97-1985

FILED
JUL 31 1998
CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

SHELLY JEAN GAGE,

Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Walter R. Rothschild, District Associate Judge.

Defendant appeals the sentence entered upon her guilty plea to possession of marijuana in violation of Iowa Code section 124.401(3) and interference with official acts in violation of Iowa Code section 719.1. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Christopher A. Cooklin, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad P. Walz, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Huitink and Vogel, JJ.

SACKETT, P.J.

Defendant-appellant Shelly Jean Gage appeals the sentence entered upon her guilty plea to possession of marijuana and interference with official acts. Defendant contends the district court erred (1) in accepting a guilty plea which had no factual basis, and (2) in abusing its discretion by suspending her driver's license. We affirm.

Defendant was charged by trial information with possession of marijuana in violation of Iowa Code section 124.401(3) (1995)[1] and interference with official acts in violation of Iowa Code section 719.1 (1995). The charges related to an incident involving attempts by a process server to locate Jeffrey Henson to serve papers on him concerning a civil suit.[2] The process server, unable to locate Henson, was of the opinion Henson lived at 4118 Lafayette. The process server contacted the Evansdale, Iowa, police department. A police officer came to offer assistance and knocked on the door at 4118 Lafayette. Defendant answered the door, and when asked about Henson's whereabouts, she told the officer Henson was not at home. The officer asked for permission to look for Henson inside, and defendant gave the officer

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[1] Though defendant was charged and pled guilty to Iowa Code section 124.401(3), as of July 1996 this section was amended and subsection (3) was renumbered as subsection (5).

[2] Defendant does not challenge, and we do not address, whether the process server was an authorized person for the service of process as defined in Iowa Code section 719.1 (1995) or whether the police officer attempting to help the alleged process server was engaged in an official act under section 719.1.

permission. The officer found Henson hiding under a bed. In the process of looking for Henson, the officer also saw part of a marijuana cigarette in an ashtray and a gold-colored finger scale in a closet. Later, he saw a canister on the dresser and defendant showed him additional marijuana in a top dresser drawer.

Defendant entered written guilty pleas to the charges. The trial court sentenced her to pay a $250 fine plus surcharge on the interference with official acts charge, and to serve thirty days in jail on both charges. The trial court suspended the thirty days in jail and placed defendant on probation for twelve months. The court also suspended defendant's driver's license for 180 days.

Defendant appeals. She first contends the district court erred by accepting her guilty plea to the interference with official acts charge. She contends there was no factual basis for the plea. She said though she initially told the officer Henson was not at home, she voluntarily allowed the officer to search the house and did not hinder the search in any way.[3] Consequently, she reasons she did not obstruct the officer's duties. She advances even if, when asked, she had told the officer Henson was there, he would have had to search to find him. She argues consequently she did nothing to obstruct or hinder what the officer was doing.

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[3] There is no challenge to whether defendant was obligated to answer the question. Consequently, we have not addressed that issue. This distinguishes this case from *State v. Hauan*, 361 N.W.2d 336, 338-39 (Iowa App. 1984).

The State first advances error was not preserved. Defendant contends if she failed to preserve error on this issue, it was because her attorney was not effective. We find it unnecessary to address the preservation of error issue.

The trial court may ascertain a factual basis for a guilty plea exists by (1) inquiry of the defendant; (2) inquiry of the prosecutor; (3) examination of the presentence report; or (4) reference to the minutes of testimony. *State v. Johnson*, 234 N.W.2d 878, 879 (Iowa 1975). Whatever the source, the record must disclose the factual basis relied on. *State v. Greene*, 226 N.W.2d 829, 831 (Iowa 1975); *State v. Williams*, 224 N.W.2d 17, 18-19 (Iowa 1974); *Ryan v. Iowa State Penitentiary*, 218 N.W.2d 616, 618-20 (Iowa 1974).

Any factual basis supporting the plea must be found in the minutes of testimony, as this is all we have available. The purpose of a trial information is to apprise a defendant of the crime so he or she has an opportunity to prepare a defense. *State v. Grice*, 515 N.W.2d 20, 22 (Iowa 1994); *State v. Kirby*, 391 N.W.2d 243, 245 (Iowa 1986). The question is whether there are sufficient facts in the minutes of testimony to support a finding beyond a reasonable doubt that defendant was in violation of the statute.

The focus is on that part of Iowa Code section 719.1(1) that states, "knowingly resists or obstructs the service or execution by any authorized person of any civil or

criminal process."[4] Iowa Code § 719.1(1) (Supp. 1995). There is disagreement as to what is required to resist and obstruct. The only definition in Iowa Code section 719.1(3) says, "The terms '*resist*' and '*obstruct*' . . . do not include verbal harassment unless the verbal harassment is accompanied by a present ability and apparent intention to execute a verbal threat physically." Iowa Code § 719.1(3) (1995).

Defendant contends she did not resist, obstruct, or hinder the investigation because she let the officer in the door to search and she was cooperative in all ways except her original answer.

In looking at the terms of the statute, "obstruct" is a more encompassing word than "resist" and includes putting obstacles in the path of officers completing their duties. *State v. Hauan*, 361 N.W.2d 336, 339 (Iowa App. 1984). The initial

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[3] 719.1. Interference with official acts.

1. A person who knowingly resists or obstructs anyone known by the person to be a peace officer, emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, in the performance of any act which is within the scope of the lawful duty or authority of that officer, emergency medical care provider under chapter 147A, or fire fighter, whether paid or volunteer, or who knowingly resists or obstructs the service or execution by any authorized person of any civil or criminal process or order of any court, commits a serious misdemeanor. However, if a person commits an interference with official acts, as defined in this subsection, and in so doing inflicts bodily injury other than serious injury, that person commits an aggravated misdemeanor. If a person commits an interference with official acts, as defined in this subsection, and in so doing inflicts or attempts to inflict serious injury, or displays a dangerous weapon, as defined in section 702.7, or is armed with a firearm, that person commits a class "D" felony.

Iowa Code § 719.1(1) (1995), *as amended by* 1996 Iowa Acts ch. 1034, § 63.

threshold question is whether these acts, although possibly included with the statute, constitute a hindrance of the official duties. *Id.*

The statute does not require an intent to do a further act or achieve some additional consequences. *State v. Buchanan*, 549 N.W.2d 291, 294 (Iowa 1996).

The minutes of testimony can support a finding by inference that the answer "no" given by defendant, even when viewed in the entire context of defendant's cooperation, can be found to have put obstacles in the course so as to have hindered the officer's duties. A reasonable fact finder could make such an inference from that evidence; consequently, we must reject defendant's challenge on this ground.

Defendant also contends the trial court erred by failing to exercise discretion in suspending her driver's license for conviction of the drug-related offense. *See* Iowa Code § 901.5(10) (1995), *as amended by* 1996 Iowa Acts ch. 1218, § 68. Defendant argues the trial court's discretion in suspending a sentence under Iowa Code section 124.401(3) (1995) extends to driver's license revocation.

The issue was resolved against the defendant in *State v. Klein*, 574 N.W.2d 347, 349 (Iowa 1998). We affirm.

AFFIRMED.