IN THE COURT OF APPEALS OF IOWA

No. 8-294 / 97-1570

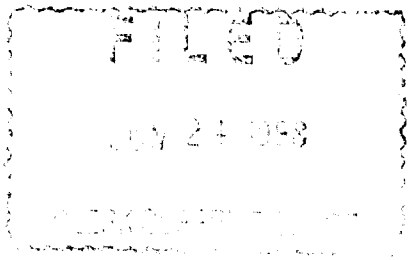
STATE OF IOWA,

Plaintiff-Appellee,

vs.

JULIE LYNNE JORGENSEN,

Defendant-Appellant.



Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard II, Judge.

Julie Jorgensen appeals from the sentence imposed upon her conviction, following a jury trial, for interference with official acts in violation of Iowa Code section 719.1 (1997). **AFFIRMED.**

Renee V. Sneitzer of Blackstock Law Offices, Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, J. Patrick White, County Attorney, and Rivka Sorensen, Assistant County Attorney, for appellee.

Decided en banc.

MAHAN, J.

Julie Jorgensen appeals the sentence ordered by the trial court after a jury found her guilty of interference with official acts. She contends: (1) the trial court abused its discretion by imposing an enhanced sentence based on her acquittal for domestic abuse and considering inappropriate and inadmissible evidence at sentencing; and (2) the trial court's sentence violates the rule against double jeopardy because it considered the domestic abuse charges when it sentenced her on the interference conviction. We affirm.

Jorgensen and her boyfriend, Scott Onnen, became involved in an argument while Onnen was driving. Ultimately, Onnen left the car and was confronted by Officer Kevin Berg. Jorgensen arrived shortly thereafter, as did Officer Matt Johnson. Berg attempted to talk to Onnen and told Jorgensen she would have to talk with Johnson. Johnson positioned himself between Jorgensen and Onnen. Johnson also told Jorgensen that Berg was conducting a criminal investigation and she would not be able to approach them. Jorgensen was informed she would have to speak directly with Officer Johnson. According to Johnson, Jorgensen indicated she did not have to do that and made several attempts to move around him to get to Berg and Onnen. When Johnson attempted to grab Jorgensen to restrain her, she pulled away. Johnson described Jorgensen as agitated and quite aggressive.

After repeated admonitions to Jorgensen telling her she could not talk with Onnen and Berg, Johnson arrested Jorgensen for interference with official acts. When he attempted to grab her arm, she pulled away again. Ultimately, three officers were involved in handcuffing her -- two officers to put her hands behind her back and one to place the handcuffs on her wrists. Johnson described Jorgensen as being aggressively resistant to his efforts to counter her actions.

Jorgensen raised the affirmative defense of justification and self-defense. At trial, the jury found Jorgensen not guilty of domestic abuse and guilty of interference with official acts. The trial court sentenced Jorgensen to thirty days in jail with twenty eight days suspended, one year of probation, ordered her to pay a $250 fine, and ordered her to attend the Batterer's Education Program. The trial court also gave Jorgensen credit for time served.

I. ABUSE OF DISCRETION IN SENTENCING. Sentencing decisions of the district court are cloaked with a strong presumption in their favor. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). When the defendant does not assert that the imposed sentence is outside the statutory limits, the sentence will be set aside only for an abuse of discretion. *Id.* The court has discretion within the applicable statutory framework to determine the sentence which will best meet these goals. *State v. Boltz*, 542 N.W.2d 9, 10 (Iowa App. 1995). An abuse of discretion is found only when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Thomas*, 547 N.W.2d at 225.

Interference with official acts is a serious misdemeanor. Iowa Code § 719.1 (1997). "For a serious misdemeanor, there shall be a fine of at least two hundred fifty dollars but not to exceed one thousand five hundred dollars. In addition, the court *may also order imprisonment not to exceed one year.*" *Id.* § 903.1(1)(b) (emphasis added). Jorgensen does not challenge the amount of the fine. "By record entry at the time of or after sentencing, the court may suspend the sentence and place the defendant on probation upon such terms and conditions as it may require . . . ." *Id.* § 907.3(3). "Probationers are subject to . . . any additional reasonable conditions which the court may impose to promote rehabilitation of the defendant or protection of the community." *Id.* § 907.6. "The length of the probation shall be for such term as the court may fix but not to exceed . . . . two years if the offense is a misdemeanor. *Id.* § 907.7.

At the sentencing hearing, the State addressed the trial court regarding sentencing:

> The officer's testimony was the defendant was out of control. Testimony from both the victim and the defendant was that during the events of the entire incident the defendant had done things, including grabbed the steering wheel numerous times while the victim was driving the car prior to the interference, and that she had attempted to prevent him from leaving the car by grabbing his T-shirt, causing it to rip.
>
> The State feels although these are not directly involved with the interference, they are important events of this incident and do indicate that additional conditions are necessary for the probationary time. Defendant has no prior criminal history that the State is aware of.

After a statement by Jorgensen and her counsel, the trial court addressed Jorgensen:

> Miss Jorgensen, your last statement is fairly concerning to me that even though you don't think that you did anything wrong and thought you were complying with what the law permitted you to do. I listened during the course of the trial. I have to be quite honest with you that it sounded to me like you were out of control, like there were some very dangerous acts of conduct which occurred on your behalf while you were attempting to have your boyfriend comply with your wishes at that point in time.
>
> Knowing Lieutenant Johnson for the number of years that I've known him and known him to be an extremely patient man and officer, I have every reason to believe that you were as out of control as the evidence indicated you were out of control. And the fact that you don't realize it today is concerning to me.
>
> Based upon the evidence introduced during the course of the trial, the verdict of guilty by the jury to Interference With Official Acts, the Court finds that the defendant should be ordered to be imprisoned in the county jail for a period of thirty days. Twenty-eight days of that sentence will be suspended. The defendant will be placed on one year of Level II Supervised Probation. Terms and conditions of probation will include having no further law violations, payment of the financial obligations in this case, attending and completing the Batterer's Education Program, which I really believe is the root of the problem that led to the interference. Minimum mandatory $250 fine plus thirty percent surcharge and court costs. Defendant will be given credit for any time previously served at the time of her arrest in this case.

Jorgensen argues any dangerous acts of conduct with her boyfriend, as well as any act of grabbing the steering wheel, are attributable to the domestic abuse charge for which she was acquitted. She further argues the trial court's statements defeat the jury's finding of justification and self-defense, and the judge effectively entered a judgment notwithstanding the verdict.

Justification is a statutory defense permitting a defendant to use reasonable force when the defendant reasonably believes such force is necessary to defend himself or herself from any imminent use of unlawful force. *State v. Stallings*, 541 N.W.2d 855, 857 (Iowa 1995). Thus, when a defendant raises the defense of justification, he does not deny the charged acts occurred; the defendant argues a reason existed for the acts. In this instance, Jorgensen does not deny she grabbed the steering wheel while Onnen was driving, or that she ripped his shirt as he attempted to get out of the car.

We find the trial court reasonably determined Jorgensen would benefit from attending the Batterer's Education Program. The trial court was well within the sentencing guidelines for a serious misdemeanor and ordering Jorgensen to attend the Batterer's Education Program was a reasonable condition imposed on Jorgensen's probation. We also find Jorgensen's remaining claims are completely without merit.

For these reasons, we affirm the sentence as entered by the trial court.

AFFIRMED.

All judges concur, except Vogel, J., who dissents.

VOGEL, J. (dissenting)

I respectfully dissent. The circumstances surrounding Jorgensen's arrest for interference with official acts indicated that Jorgensen may have been physically aggressive with her boyfriend. For those acts Jorgensen was charged with domestic abuse. The jury, however, found Jorgensen not guilty of the charge. Yet in spite of this, the trial court referred to specific acts of domestic abuse in sentencing Jorgensen. Although the court stated the events occurring earlier in the evening were "not directly involved with the interference, they are important events of *this* incident and do indicate that *additional conditions are necessary* for the probationary time." (Emphasis added).

I would find the court impermissibly considered a crime for which Jorgensen was found not guilty. *See, e.g., State v. Ashley*, 462 N.W.2d 279, 283 (Iowa 1990) (sentence vacated and case remanded for resentencing where trial judge considered evidence of other acts); *State v. Messer*, 306 N.W.2d 731, 732-33 (Iowa 1981) (case remanded for resentencing where trial court relied on additional, unproven, and unprosecuted charges and no facts before trial court showed those charges were valid; defendant did not admit additional charges by pleading guilty to the additional charges; and trial court made no finding as to whether facts existed to substantiate the charges); *State v. Thompson,* 275 N.W.2d 370, 372 (Iowa 1979) (case remanded for resentencing where trial judge referred to a higher original charge in sentencing the defendant for a reduced charge to which he pled guilty); *State v. Hansen*, 344 N.W.2d

725, 730 (Iowa App. 1983) (holding that "it is impermissible for a court in imposing sentence to rely upon prior unprosecuted offenses, unless they are admitted to by the defendant, or the facts before the court show the accused committed the crime.") .

As a result of the trial court's impermissible consideration of the domestic abuse charge, Jorgensen was required, as a term of probation, to attend a batterer's education program. I would find the court erred in requiring that Jorgensen attend the program and remand for resentencing.