

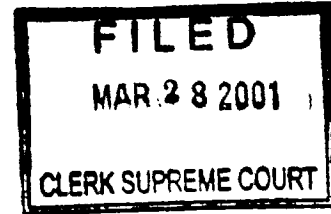
IN THE COURT OF APPEALS OF IOWA

No. 1-107 / 00-0659
Filed March 28, 2001

IN THE INTEREST OF

**D.I.P.,
Minor Child,**

**D.I.P.,
Appellant.**



Appeal from the Iowa District Court for Linn County, L. Verne Robinson,
Judge.

A juvenile appeals from the district court ruling adjudicating him a
delinquent for committing the offense of interference with official acts.

AFFIRMED.

Mark C. Meyer of Kinnamon, Kinnamon, Russo & Meyer, Cedar Rapids,
for appellant.

Thomas J. Miller, Attorney General, Janet L. Hoffman, Assistant Attorney
General, and Susan Conn, Assistant County Attorney, for appellee.

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

000205

VOGEL, J.

David appeals the decision of the juvenile court which found he committed the delinquent act of interference with official acts. He claims: (1) the conduct he was charged with does not constitute interference with official acts, as defined in Iowa Code section 719.1 (1999); (2) there is insufficient evidence in the record to show he committed a delinquent act; and (3) he received ineffective assistance of counsel. We affirm.

On February 2, 2000, police officers executed a search warrant at a home in Cedar Rapids, looking for property involved in a robbery in Iowa City. Andre was a suspect in the crime. The home to be searched belonged to Andre's parents, Mary and Dave. The warrant permitted a search of "Any persons present at the time of the execution of this warrant."

Mary met the police officers at the door. She informed them Andre did not live there, but they could search the home. She called upstairs to her husband and son, David, and informed them police officers were there with a search warrant. As David came down the stairs, detective Douglas Larison asked him his name. David refused to answer. Detective Larison testified he told David he needed to conduct a pat-down search, but David said no one was going to touch him and he was leaving. David then proceeded toward the door. Detective Larison stated that because David would not stop, other officers grabbed him, forced him to the floor and handcuffed him. David swore at the officers and resisted their efforts to subdue him. The testimony of investigator Martin DeVore and officer Troy Nogelmeier supported the testimony of detective Larison.

David, Mary, and her husband, all testified the officers, without provocation, snatched David off the stairs and then threw him on the floor. They stated they kept trying to tell the officers David was not Andre and he was only sixteen years old. David admitted he did not think the officers had the right to search him because he believed they were looking for Andre, and not him.

The juvenile court determined David committed a delinquent act, as defined in section 232.2(12)(a), which if he were an adult would have constituted the offense of interference with official acts. The court found:

[David] knowingly resisted and obstructed Douglas Larison and additional officers by actually opposing the officers and refusing to be searched and attempting to leave the residence. He made it necessary for the officers to use force to carry out their duty.

David was placed in a residential treatment facility. He appeals.

I. Scope 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). Our scope of review in appeals from delinquency cases is de novo. *In re G.J.A.*, 547 N.W.2d 3, 5 (Iowa 1996). Weight should be given to the fact findings of the juvenile court, especially when considering the credibility of witnesses, but the reviewing court is 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).

II. Delinquency Petition

David contends the delinquency petition does not allege actions which would constitute the offense of interference with official acts, as set forth in section 719.1. The petition states David committed interference with official acts "by swearing at officers, refusing to identify himself, and walking away from officers, knowing them to be Cedar Rapids Police Officers." David asserts that even if he committed these acts, he would not have committed the offense of interference with official acts.

This issue has not been preserved for our review. As the State points out, there is nothing in the record to show this issue was raised before the juvenile court. Issues must be presented to and passed upon by the juvenile court before they can be raised and decided on appeal. *In re V.M.K.*, 460 N.W.2d 191, 193 (Iowa Ct. App. 1990). We may not consider an issue 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).

III. Sufficiency of the Evidence

David claims there is insufficient evidence in the record to show he committed the offense of interference with official acts. He asserts the record does not show he knowingly resisted or obstructed the officers. He states he merely attempted to walk away from officers, when they grabbed him and threw him on the ground.

Section 719.1(1) provides:

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, . . . 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.

Our supreme court has noted the language of section 719.1 was chosen because it conveys the idea of active interference. *State v. Smithson*, 594 N.W.2d 1, 2 (Iowa 1999) (citing John L. Yeager & Ronald L. Carlson, *Criminal Law and Procedure* § 422 (Supp. 1998)). Passive conduct, such as failure to cooperate, is the subject of another code section, section 719.2. *Id.*

"Resist" has been interpreted to mean the "person charged engaged in active 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 duty." *State v. Donner*, 243 N.W.2d 850, 854 (Iowa 1976). The term "obstruct" is more broad, and includes conduct which constitutes a hindrance of official duties. *State v. Hauan*, 361 N.W.2d 336, 339 (Iowa Ct. App. 1984). 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).

On our de novo review, we find there is evidence in the record to prove beyond a reasonable doubt David committed interference with official acts. The evidence shows Mary informed David police officers were in the house with a search warrant, and thus he was aware of these facts. David's acts from this point forward fall under the "resistance" arm of section 719.1(1). David refused to allow the officers to conduct a pat-down search. He did not submit to the officers who tried to stop him from leaving the house, and actively resisted the officers. The officers put David on the floor and placed him in handcuffs. There

is evidence to show the officers were required to use force to carry out their duties.

IV. Ineffective Assistance

David contends he received ineffective assistance due to trial counsel's failure to challenge the validity of the search warrant which brought the officers to David's home. He claims the search warrant was an invalid general warrant, which did not particularly describe the persons or places to be searched.

The test for ineffective assistance of counsel in juvenile cases is generally the same as in criminal proceedings. *In re D.P.*, 465 N.W.2d 313, 316 (Iowa Ct. App. 1990). In order to establish ineffective assistance, a party must show counsel's performance was deficient, and actual prejudice resulted. *In re J.P.B.*, 419 N.W.2d 387, 392 (Iowa 1988). We presume counsel's conduct falls within the range of reasonable professional competency. *In re A.R.S.*, 480 N.W.2d 888, 891 (Iowa 1992).

Even if we assume the search warrant was invalid, David had no right to resist the officers' request for a pat-down search. Our supreme court has stated:

Even though an initial arrest is unlawful, a defendant has no right to resist the arrest. If the defendant does so, probable cause exists for a second arrest for resisting. A search incident to the second arrest is lawful.

State v. Dawdy, 533 N.W.2d 551, 555 (Iowa 1995) (citing *United States v. Bailey*, 691 F.2d 1009, 1016-18 (11th Cir. 1982)). In *Dawdy*, our supreme court held, "a defendant's response to even an invalid arrest or *Terry* stop may constitute independent grounds for arrest." *Id.*

We find trial counsel was not ineffective for failing to object to the search warrant, when such an objection would have no effect in the delinquency proceedings against David. Trial counsel had no duty to object to the warrant because David's conduct constituted a separate act. Whether the search warrant was invalid or not, David's actions were improper. David has not shown he received ineffective assistance of counsel.

We affirm the decision of the juvenile court finding David committed a delinquent act.

AFFIRMED.