COURT OF APPEALS
DECISION
DATED AND FILED

DECEMBER 17, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-1994-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

NATHANIEL S. SHERROD

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County: ALLAN B. TORHORST, Judge. *Affirmed.*

ANDERSON, J. Nathaniel S. Sherrod appeals from a judgment of conviction for resisting or obstructing an officer as a habitual offender in violation of §§ 946.41(1) and 939.62, STATS. Sherrod contends that his simply running from the police officer is insufficient to support the conviction. Because we conclude that the evidence is sufficient to convict Sherrod of the obstruction charge, we affirm.

According to the testimony of Officer Steven Neiman, he was patrolling the north side of Racine on September 14, 1996, at approximately 2:15 a.m., when he observed a vehicle stop in the middle of the street. While the vehicle was stopped, a party approached the vehicle and spoke to the driver for approximately five to ten seconds. The vehicle pulled away and Neiman followed it. Neiman stated that the vehicle made a quick turn and picked up speed. At that point, Neiman activated his siren and lights but the vehicle failed to pull over. Neiman pursued the vehicle for two more blocks when the car stopped in the middle of the street and the four occupants took off running.

Neiman explained that he watched the driver of the vehicle, as he was trained to do, and that he had a good description of him. Neiman radioed the description to other patrolmen in the area. Officer Marco Rodriguez testified that he was in the vicinity, he heard the transmission and he observed an individual who matched the description. Rodriguez followed him in his squad car. As other marked squad cars came into the area, the individual stopped running and slowed down to a fast walk. Rodriguez detained the individual, verified his description and then took him back to Neiman's location. Neiman testified that he positively identified Sherrod as the driver of the vehicle. He further testified that by running away from him after Neiman initiated the traffic stop, Sherrod made his duties more difficult.

Sherrod was charged with resisting or obstructing an officer in violation of § 946.41, STATS. Sherrod pleaded not guilty and requested a jury trial. The jury found Sherrod guilty of one count of obstructing an officer. Sherrod moved for judgment notwithstanding the verdict which was denied. The court sentenced Sherrod to one year of probation with forty-five days in the county jail as a condition of probation. Sherrod appeals.

In reviewing the sufficiency of the evidence to support a conviction, an appellate court may not substitute its judgment for the trier of fact unless the evidence, viewed most favorably to the State and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. *See* ***State v. Poellinger***, 153 Wis.2d 493, 507, 451 N.W.2d 752, 757-58 (1990). If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence presented at trial to find the requisite guilt, an appellate court may not overturn the verdict. *See* ***id.*** at 507, 451 N.W.2d at 758. It is the function of the trier of fact—not the appellate court—to fairly resolve conflicts in the testimony, weigh the evidence and draw reasonable inferences from it. *See* ***id.*** at 506, 451 N.W.2d at 757.

The elements of § 946.41, STATS., are: (1) the defendant obstructed the officer, (2) the officer was doing an act in an official capacity, (3) the officer was doing an act with lawful authority, and (4) the defendant knew that the officer was acting in an official capacity and with lawful authority and that the defendant knew his conduct would obstruct the officer. *See* WIS J I—CRIMINAL 1766; *see also* ***State v. Grobstick***, 200 Wis.2d 242, 248, 546 N.W.2d 187, 189 (Ct. App. 1996). "'Obstructs' includes without limitation knowingly giving false information to the officer or knowingly placing physical evidence with intent to mislead the officer in the performance of his or her duty …." Section 946.41(2)(a). "To obstruct an officer means that the conduct of the defendant prevents or makes more difficult the performance of the officer's duties." WISCONSIN J I—CRIMINAL 1766.

Sherrod argues that his running away from the stopped car is insufficient to constitute obstruction of an officer. Citing ***Henes v. Morrissey***, 194 Wis.2d 338, 533 N.W.2d 802 (1995), and ***State v. Hamilton***, 120 Wis.2d 532, 356

N.W.2d 169 (1984), he contends that "[i]f the failure to give the police information when lawfully stopped does not constitute obstructing, [then his] running away from the stopped car should not constitute obstructing either." We disagree.

There is no question that an officer may stop and detain an individual for a reasonable period of time for purposes of investigating possible criminal behavior under facts and circumstances that would fall short of probable cause to support an arrest. *See* ***Terry v. Ohio***, 392 U.S. 1, 22 (1968); *see also* § 968.24, STATS. Under ***Terry***, such detention is constitutionally permissible if the officer may be said to have an "articulable suspicion that the person has committed or is about to commit a crime." ***State v. Goyer***, 157 Wis.2d 532, 536, 460 N.W.2d 424, 425-26 (Ct. App. 1990). If such a suspicion may be said to exist, the person may be temporarily stopped and detained to allow the officer to "investigate the circumstances that provoke suspicion," as long as "[t]he stop and inquiry [are] 'reasonably related in scope to the justification for their initiation'"—which in this case was to verify or dispel the suspicion that the party approaching Sherrod's vehicle under the circumstances *may* have been for a criminal purpose. *See* ***United States v. Brignoni-Ponce***, 422 U.S. 873, 881 (1975) (internal quoted source omitted).

Sherrod does not contest that Neiman was attempting to conduct a ***Terry*** stop of the vehicle. The reasonableness and validity of the stop are also uncontested. Rather, Sherrod maintains that no obstruction occurred as a matter of law. Sherrod's position ignores one of the basic purposes of the ***Terry*** stop; it provides law enforcement officers an opportunity to temporarily freeze a situation in order to investigate further. *See* ***State v. Jackson***, 147 Wis.2d 824, 835, 434 N.W.2d 386, 391 (1989). Neiman was lawfully entitled to stop Sherrod's vehicle

for investigative purposes. He was plainly acting under lawful authority in attempting to do so. However, when Sherrod ran from the vehicle, Neiman was unable to conduct an investigation. Sherrod's affirmative act of fleeing from Neiman did in fact delay and temporarily frustrate Neiman's ability to perform his duties.

The facts established at trial were that Sherrod thwarted Neiman's lawful attempts to briefly detain him for questioning. The jury could properly determine on that evidence that the elements of the obstructing charge had been established.

Neither ***Henes*** nor ***Hamilton*** compels a different conclusion. In ***Henes***, the supreme court did not discuss the facts of the defendant's conduct beyond his refusal to identify himself. *See* ***Henes***, 194 Wis.2d at 354, 533 N.W.2d at 808. The court declined to equate the refusal to identify oneself with "knowingly giving false information" within the meaning of § 946.41(2)(a), STATS. *See* ***Henes***, 194 Wis.2d at 354, 533 N.W.2d at 808. The court concluded: "Without more than mere silence, there is no obstruction." ***Id.***

In ***Hamilton***, the defendant was asked for identification and responded, "I'm not telling you anything," whereupon he was arrested for obstructing. *See* ***Hamilton***, 120 Wis.2d at 534, 356 N.W.2d at 170. The court concluded that evidence of the defendant's refusal to identify himself to officers was insufficient to constitute obstructing, primarily because the information sought by police—the defendant's identity—was "readily available" from another person on the scene. *See* ***id.*** at 544, 356 N.W.2d at 175.

These cases can be summed up as follows: mere silence, or a refusal to identify oneself to police officers—especially where the State has not shown

how the refusal may have affected the officers—will not, without more, establish a violation of § 946.41, STATS. *See* ***Henes***, 194 Wis.2d at 354, 533 N.W.2d at 808; ***Hamilton***, 120 Wis.2d at 543, 356 N.W.2d at 175. The case at bar, however, does not involve mere silence, or a refusal to provide requested information that is readily available from another person at the scene. Rather, Sherrod exited the vehicle and took off running; he was not a passive or silent observer to an investigation. His conduct delayed and impeded Neiman in the performance of his duties in attempting to conduct a ***Terry*** stop investigation.

Sherrod further maintains that "[i]f the stopped individual has no duty to assist the officer's investigation by giving out information … likewise the individual ought not be required to remain available to the police to answer questions." We have already rejected this contention as contrary to the purpose of a ***Terry*** stop. A ***Terry*** stop is a temporary detention of a person for a reasonable period of time permitted when an officer reasonably suspects that the person is committing, is about to commit or has committed a crime. *See* § 968.24, STATS. The stop and temporary questioning must be conducted in the vicinity where the person is stopped. *See* ***id.*** The stopped person, however, does not control the duration of a valid encounter and if consideration of all of the circumstances shows that the investigation has not been completed, a suspect does not have a right to terminate the investigation. *See* ***Goyer***, 157 Wis.2d at 537, 460 N.W.2d at 426.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.