COURT OF APPEALS
DECISION
DATED AND FILED

May 27, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-3496-CR

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

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

DAVID PALMS,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Clark County: MICHAEL W. BRENNAN, Judge. *Reversed and cause remanded.*

EICH, J.[1] The State of Wisconsin appeals from an order dismissing a misdemeanor complaint against David Palms for lack of probable cause. The complaint charged Palms with obstructing a conservation warden during the execution of a search warrant at a home in which he was visiting. We conclude

[1] This appeal is decided by a single judge pursuant to § 752.31(2)(f), STATS.

that reversal is required under ***State v. Smith***, 50 Wis.2d 460, 184 N.W.2d 889 (1971).

The complaint in this case begins by stating that, on a certain date and in a certain location in Clark County, Palms "[o]bstruct[ed] a warden in the performance of his duties, to-wit: … interfere[d] as the [warden] was executing a search warrant." For the facts underlying the charge, the complaint incorporates several documents, including the warden's report of the incident which indicates that, while the warden and other law enforcement officers were executing a search warrant at a residence (looking for evidence of a game-law violation), Palms refused to remain in the place the officers had instructed him to stay while they were executing the warrant, moving again and again to another area to get his cigarettes. When he continued to disobey the warden's instructions, he was handcuffed and had to be forcibly seated in a chair.

The circuit court concluded that, because, according to the complaint documents, Palms and others in the house had been searched and were known to be unarmed, and because the evidence for which they were searching (a deer carcass) was not in danger of being lost or destroyed, the complaint failed to state probable cause for Palms's arrest for obstructing a warden. We review the sufficiency of a criminal complaint de novo. ***State v. Adams***, 152 Wis.2d 68, 74, 447 N.W.2d 90, 92 (Ct. App. 1989).

We note first that the State agrees that legal principles applicable to the offense of obstructing an officer under § 946.41, STATS., are equally applicable

to the charged offense of obstructing a conservation warden under § 29.64, STATS.[2]

Palms did not file a brief on the appeal. And while the State argues at length on the requirements for probable cause and the sufficiency of the complaint's factual allegations under those requirements, the supreme court held in ***Smith***, *supra*, that, unlike other offenses, a complaint alleging obstructing or resisting an officer in the course of his or her official capacity, is sufficient if it states the offense in the language of the statute, and that "no further facts are necessary." ***Id.***, 50 Wis.2d at 469, 184 N.W.2d at 894. The complaint in ***Smith***—which the court held was sufficient—stated only that, on the date in question, the defendant "did unlawfully and knowingly resist an officer while such officer was doing an act in his official capacity and with lawful authority, contrary to section 946.41(1) of the Wisconsin Statutes." ***Id***. We consider the complaint in this case to be the equivalent of that in ***Smith***, and conclude that, as a result, reversal of the circuit court's order is required.[3]

By the Court.—Order reversed and cause remanded.

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

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[2] This section was renumbered § 29.951, STATS., by 1997 Act 248 § 683, effective Jan. 1, 1999.

[3] We note in this regard that, like the trial court, we consider the specific facts set forth in the documents attached to the complaint to be problematic with respect to a traditional probable-cause determination. As indicated, however, the supreme court has stated quite clearly in ***State v. Smith***, 50 Wis.2d 460, 184 N.W.2d 889 (1971) that, "with respect to th[e] type of offense [stated in § 946.41, STATS.], the charge as stated in statutory language is sufficient and … no further facts are necessary." ***Id.*** at 469, 184 N.W.2d at 894.