

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

July 31, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 96-0733-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**ALLEN K. GOLDSMITH,**

**Defendant-Appellant.**

APPEAL from an order of the circuit court for Jefferson County: JACQUELINE R. ERWIN, Judge. *Affirmed.*

DYKMAN, J. This is a single-judge appeal decided pursuant to § 752.31(2)(f), STATS. Allen K. Goldsmith appeals from an order denying his motion to dismiss a misdemeanor criminal complaint charging him with obstruction of an officer, contrary to § 946.41, STATS. Goldsmith argues that the complaint failed to establish probable cause that the police officer arresting him acted with lawful authority, an essential element of the crime charged. Because the criminal complaint alleged that the officer acted with lawful authority, we conclude that the trial court properly denied the motion and affirm the order.

## BACKGROUND

Goldsmith was charged with obstruction of a police officer by a criminal complaint alleging he had given false information to a deputy sheriff. Under § 946.41(1), STATS., "Whoever knowingly resists or obstructs an officer while such officer is doing any act in an official capacity and with lawful authority, is guilty of a Class A misdemeanor." The complaint stated that the officer subjected Goldsmith to a traffic stop for driving in a "reckless manner." Prior to trial, Goldsmith moved to dismiss the complaint because it failed to state facts showing that the officer was acting with lawful authority. The trial court denied Goldsmith's motion. After a bench trial, the trial court found Goldsmith guilty. Goldsmith appeals.

## STANDARD OF REVIEW<sup>2</sup>

Sufficiency of a complaint is a matter of law addressed *de novo* by this court. *State v. Adams*, 152 Wis.2d 68, 74, 447 N.W.2d 90, 92 (Ct. App. 1989). A challenge to a complaint is not made moot by a subsequent trial if the issue has been preserved for appeal. *Id.* at 73, 447 N.W.2d at 92.

## DISCUSSION

Goldsmith argues that the complaint failed to show that the obstructed officer was acting with lawful authority because it recited no facts indicating the officer had reasonable suspicion to initiate the traffic stop.<sup>1</sup> Goldsmith contends the assertion that the officer observed him operating his vehicle in a "reckless manner" is a conclusion of law, by itself insufficient to establish probable cause. Goldsmith reasons that since obstruction requires that the officer is acting with lawful authority and knowledge of this by the defendant, these elements must be factually supported in the complaint. In other words, a determination of probable cause requires the State to show lawful police conduct when it is a necessary element of the offense charged.

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<sup>1</sup> The parties have not briefed whether *State v. Webb*, 160 Wis.2d 622, 467 N.W.2d 108 (1991), should be extended to cover attacks on criminal complaints in addition to assertions of preliminary hearing inadequacies. We do not consider this issue.

"The complaint is a written statement of the essential facts constituting the offense charged. It may be made on information and belief." Section 968.01, STATS. A written complaint must contain minimum facts which are themselves sufficient, or allow reasonable inferences, for a neutral judicial officer to establish probable cause. *State ex rel. Evanow v. Seraphim*, 40 Wis.2d 223, 226, 161 N.W.2d 369, 370 (1968). Generally, a complaint is sufficient if it answers the following questions: (1) who is charged?; (2) what is the person charged with?; (3) when and where did the offense take place?; (4) why is this particular person being charged?; and (5) who says so? *Adams*, 152 Wis.2d at 73-74, 447 N.W.2d at 92. Goldsmith disputes whether the fourth question was satisfactorily answered in the complaint.

When a complaint is challenged for failure to establish probable cause, the test is whether "the charges are not capricious and are sufficiently supported to justify bringing into play the further steps of the criminal process." *State ex rel. Cullen v. Ceci*, 45 Wis.2d 432, 442, 173 N.W.2d 175, 179 (1970) (quoting *Jaben v. United States*, 381 U.S. 214, 224 (1965)). To be sufficient the complaint must only be minimally adequate. *Adams*, 152 Wis.2d at 73, 447 N.W.2d at 92. The State is not required to provide an encyclopedic listing of all evidentiary facts necessary for conviction of the crime charged. *Evanow*, 40 Wis.2d at 229, 161 N.W.2d at 372.

Probable cause cannot be found, however, if a complaint provides nothing more than legal conclusions. See *State v. Higginbotham*, 162 Wis.2d 978, 992, 471 N.W.2d 24, 30 (1991). In *Ritacca v. Kenosha County Court*, 91 Wis.2d 72, 82-84, 280 N.W.2d 751, 756-57 (1979), a complaint charging possession of marijuana with intent to deliver was held insufficient because it stated only that the defendant was found with marijuana "in his possession" without any underlying facts as to what constituted the element of possession. Goldsmith argues that the complaint charging him mirrors the complaint in *Ritacca* because it did not include any underlying facts establishing the element of lawful authority.

However, a complaint charging resisting or obstructing a police officer under § 946.41(1), STATS., is legally sufficient if it recites the statutory language of the offense. *State v. Smith*, 50 Wis.2d 460, 469, 184 N.W.2d 889, 894 (1971). In *Smith*, the complaint stated only that the defendant did "unlawfully and knowingly resist an officer while such officer was doing an act in his official

capacity and with lawful authority." *Id.* at 469, 184 N.W.2d at 893-94. A majority of the court concluded that "with respect to this type of offense, the charge as stated in statutory language is sufficient and that no further facts are necessary." *Id.* at 469, 184 N.W.2d at 894.

Accordingly, it is sufficient that the complaint charging Goldsmith states that the officer was acting with lawful authority when Goldsmith gave false information to the officer. The complaint stated that Goldsmith did "knowingly obstruct an officer ... while such officer was doing an act in his official capacity and with lawful authority." The complaint was therefore sufficient, and no further facts underlying the charge were required.

*By the Court.* – Order affirmed.

Not recommended for publication in the official reports. *See* RULE 809.23(1)(b)4, STATS.