COURT OF APPEALS
DECISION
DATED AND FILED

January 22, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-1761-CR **Cir. Ct. No. 00-CM-1098**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES J. MEYER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marathon County: PATRICK M. BRADY, Judge. *Reversed.*

¶1 CANE, C.J.[1] James Meyer, pro se, appeals a judgment entered on a jury verdict convicting him of obstructing an officer contrary to WIS. STAT. § 946.41. Meyer was charged with obstruction and mistreating an animal after

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

being accused of shooting his neighbor's dog with a pellet gun. The jury found Meyer not guilty of mistreating an animal, but convicted him of obstruction. While Meyer raises several challenges to his conviction, we only address his sufficiency of the evidence argument because we conclude as a matter of law the evidence presented at trial was insufficient to support Meyer's conviction. Therefore, we reverse the trial court's judgment.

BACKGROUND

¶2 On March 17, 2000, Marathon County sheriff's deputy Matthew Scheffler began an investigation into the death of Penny, a chocolate Labrador owned by Tracy and James Jaworski. The previous day, the Jaworskis had taken Penny to the veterinarian after noticing the dog had been acting strangely. The veterinarian informed the Jaworskis that Penny had suffered blunt trauma and had also been shot. Penny later died at the veterinary clinic.

¶3 The Jaworskis told Scheffler they suspected Meyer, their neighbor, in Penny's death. Scheffler went next door and questioned Meyer. According to the complaint, Meyer told Scheffler he was familiar with Penny, saying the dog was over in his yard frequently and also that he was afraid it was going to bite someone. Meyer also said the dog had growled at him on several occasions and had been in his yard the previous day. Scheffler asked whether Meyer or his sons had done anything to the dog at that time. Meyer responded, "No, nothing, my sons and I stayed in the house." Scheffler then told Meyer that Penny had died and the Jaworskis suspected his and his sons' involvement. Meyer said his sons owned pellet guns, but would not shoot a dog and added, "I can't believe anyone would do something like that," and "I don't think the dog would let anyone beat it."

¶4 Scheffler asked Meyer for permission to speak to Meyer's sons, who were both at school. Meyer agreed. Both of Meyer's sons said their father had shot Penny with a pellet gun. Meyer was charged with mistreating an animal and obstructing an officer. The obstruction charge was based on Meyer's denial of shooting Penny.

¶5 At trial, Scheffler testified as follows regarding his discussion with Meyer:

> Q: Did you speak to anybody while you were over there [Meyer's home]?
>
> A: Yes, I spoke with James Meyer.
>
> Q: Was he willing to talk to you?
>
> A: Yes.
>
> Q: Okay. What, if anything, did you ask him?
>
> A: I initially told him I was investigating a complaint with the neighbors' dog and asked if he knew anything about the dog in particular. And he told me he was familiar with the dog, that it is over on his property a lot, and he was concerned that it would bite someone. And I asked him if he knew the dog to be at all vicious. And he said it had growled at him on several occasions.
>
> Q: Did you ask him anything about pellet guns at his residence?
>
> A: I had also told him that the dog had died and that the neighbor suspected that he or his sons may have been involved in actually hurting or shooting the dog. The Jaworskis had learned that the dog may have been shot or beaten, and I told James Meyer that both the possibilities exist that the dog was shot or beaten.
>
> Q: And what did he say?
>
> A: He told me that his sons have pellet guns but that they wouldn't shoot the dog, that wasn't like them.

> Q: Did you ask the defendant whether or not he shot the dog?
>
> A: I did, and he said no.
>
> Q: Now, at that time were his sons home, did you interview them?
>
> A: No, they weren't.
>
> Q: You know the sons' names?
>
> A: They're Jason and Steven Meyer.
>
> Q: Do you know -- well, first, let's back up. Did you ask the defendant where his sons were?
>
> A: Yeah, they were in school. I had actually asked James -- well, James said he and his sons were both adamant they weren't involved in this in any way, and I wanted to clear them as suspects and also confirm James' story and asked if I could speak with his sons at school.
>
> Q: And what did he tell you?
>
> A: He said, I don't care.

¶6 The jury found Meyer not guilty of mistreating an animal but convicted him of obstruction.[2] Meyer appeals.

DISCUSSION

¶7 Meyer makes numerous challenges to his conviction, most of which are undeveloped and unsupported by the record. Normally, we need not address these arguments. *See* ***State v. Flynn***, 190 Wis. 2d 31, 58, 527 N.W.2d 343 (Ct. App. 1994). Meyer also challenges the sufficiency of the evidence presented at trial, asserting "the state failed to prove the elements listed in the jury instructions

[2] At trial, Meyer's sons substantially changed what they had told Scheffler regarding their father's involvement in the shooting.

beyond a reasonable doubt that the defendant obstructed an officer." While this argument is similarly undeveloped, we address it because we conclude Meyer was entitled to be found not guilty of obstruction as a matter of law.

¶8 The crime of obstruction has four elements: (1) that the accused knowingly gave false information to an officer; (2) that the officer was acting in an official capacity; (3) that the officer was doing an act with lawful authority, and; (4) that the defendant intended to mislead the officer in the performance of his or her duty. WIS JI—CRIMINAL 1766A; WIS. STAT. § 946.41. Meyer argues he could not be convicted of obstruction because he was found not guilty of mistreating an animal. We understand this argument to be that it is impossible for Meyer to be convicted for lying about his involvement in a crime after a jury acquitted him for that crime. We do not address this claim, however, because our review of the record reveals insufficient evidence to support an obstruction conviction even if Meyer lied to Scheffler when he denied his involvement in the shooting.

¶9 Appellate review of the sufficiency of the evidence to support a jury verdict is highly deferential. *See* ***State v. Poellinger***, 153 Wis. 2d 493, 503-04, 451 N.W.2d 752 (1990). In reviewing the sufficiency of the evidence to support a conviction, an appellate court may not reverse a conviction unless the evidence, viewed most favorably to the State and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. ***Id.*** at 501. If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it. ***Id.*** at 507.

¶10 The legislature did not intend to include within WIS. STAT. § 946.41 all false answers or false statements a defendant utters intending to exculpate himself or herself against a charge of a crime and to prevent his or her prosecution. ***State v. Espinoza***, 2002 WI App 51, ¶20, 250 Wis. 2d 804, 641 N.W.2d 484. In ***Espinoza***, we determined a criminal complaint in which the defendant was alleged to have denied involvement in a theft, then threatened to sue the investigating officers and told them they had the wrong person, was insufficient to support an obstruction charge and affirmed the trial court's dismissal. ***Id.*** We rejected the State's contention that "Espinoza's denial of involvement in a crime which there is probable cause to believe he committed, as a matter of law, establishes probable cause that he also committed the crime of o[b]structing." ***Id.*** at ¶21.

¶11 Our decision in ***Espinoza*** relied in part on our supreme court's statement in ***Peters v. State***, 70 Wis. 2d 22, 29, 233 N.W.2d 420 (1975), where the court said a district attorney "should have sound reasons for believing that statements made by a suspected defendant to the police were knowingly and intentionally made for the purpose of deceiving and misleading the police, and not simply out of a good faith desire to defend against an accusation of crime." ***Espinoza***, 2002 WI App 51 at ¶21. We also noted the purpose of WIS. STAT. § 946.41 is to prevent the waste of time, energy and expense involved in having law enforcement officers running down false leads concerning criminal conduct, and that the law did not require Espinoza to admit he was involved in the theft. ***Id.*** at ¶22.

¶12 After reviewing the record in light of our holding in ***Espinoza***, we determine the evidence presented at trial was insufficient to support the jury's guilty verdict on the obstruction charge. The only false statement the State contends Meyer made to Scheffler was denying he shot Penny. The jury must

have concluded Meyer was lying in order to support its verdict. If, under ***Espinoza***, a mere denial of involvement in a crime is insufficient to support a probable cause determination on a defendant's motion to dismiss an obstruction charge, the same denial cannot be used to prove Meyer's guilt beyond a reasonable doubt.

¶13 Nor does anything else in Meyer's conversation with Scheffler support an obstruction conviction. The State does not argue that Meyer's statements regarding Penny's demeanor or being on his property were false or intended to mislead Scheffler, nor could any jury so conclude. The same can be said for Meyer's statements about his sons. Meyer denied his sons' involvement in the shooting. Nothing in the record suggests this was false. The only statement the State offered in support of the obstruction charge was Meyer's denial of his involvement. This alone cannot support a conviction.

¶14 We note that Meyer's trial was more than two years after the alleged incident and ***Espinoza*** was decided near the end of that period. It does not appear either party was aware of the holding in ***Espinoza*** and, as we said there, the issue was one of first impression in Wisconsin. ***Id.*** at ¶13. Nonetheless, we conclude ***Espinoza*** requires us to overturn the jury's verdict here. Because we determine the evidence was insufficient to support the jury's verdict, we need not address Meyer's other claims of error, many of which were undeveloped or unsupported by the record. *See* ***Sweet v. Berge***, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983); ***Flynn***, 190 Wis. 2d at 58.

By the Court.—Judgment reversed.

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