IN THE COURT OF APPEALS OF IOWA

No. 0-708 / 09-1916
Filed January 20, 2011

VERNON LONG,
Plaintiff-Appellant,

vs.

ROBERT LAUFFER and DOUG MILLER,
Defendants-Appellees.

Appeal from the Iowa District Court for Union County, David L. Christensen, Judge.

Vernon Long appeals from the district court order entering judgment in favor of the defendants, Robert Lauffer and Doug Miller, on his claims of assault, false arrest, trespass, and slander. **AFFIRMED.**

Andrew B. Howie and Frederick B. Anderson of Judson, Mallaney, Shindler & Anderson, P.C., West Des Moines, for appellant.

Catherine K. Levine, Des Moines, and Arnold Kenyon of Kenyon & Nielsen, P.C., Creston, for appellee Lauffer.

John P. Sarcone, Polk County Attorney, and Roger J. Kuhle, Assistant Polk County Attorney, Des Moines, for appellee Miller.

Heard by Mansfield, P.J., and Danilson and Tabor, JJ.

TABOR, J.

This case arises from an encounter between a group of hunters and a land owner. The land owner, Vernon Long, appeals from the district court's entry of judgment in favor of the defendants, Robert Lauffer and Doug Miller, on his claims of assault, false arrest, trespass, and slander. He contends the court erred in admitting certain testimony into evidence. He also contends the court's findings are not supported by substantial evidence. Because any error in admitting evidence into the record was harmless and substantial evidence supports the result, we affirm.

I. Background Facts and Proceedings.

On December 6, 2006, Lauffer and Miller were hunting for deer in Union County. Their eleven-member party had permission to hunt on land bordering the property of Vernon Long. Long was performing chores on his property that morning when he saw a hunter, whom he believed to be his neighbor Jerry Young, start to climb over a fence onto Long's land. Around this time, the hunters heard shots being fired and assumed Long was firing at them.[1]

Lauffer called 911 and informed the dispatcher that Long was "shooting his gun again at us, honking his horn and acting like a damn fool." Lauffer testified that the shots sounded like they came from a pistol or other small firearm and none of the hunters was carrying a pistol. Lauffer placed three more 911

[1] In 2000, it was alleged Long was shooting a handgun at a group of hunters, including Lauffer. Long maintains he was shooting at coyotes to keep them from his livestock. In connection with that incident, Long entered an Alford plea to a charge of disturbing a hunt in violation of Iowa Code section 481A.125.

calls to report Long's location as Long drove his pickup truck to another part of his property.

When Long pulled into his driveway and parked, a white pickup truck from the hunting party pulled in behind him, blocking his exit. A second pickup parked at the side of the road. Miller, who is a Polk County deputy sheriff, exited one of the trucks and approached Long.

The men's stories differ as to what occurred next. Miller testified he identified himself as a Polk County deputy sheriff and showed Long his badge, and that Long wrote down his name and badge number. Long testified that Miller identified himself as "Officer Addacovich" who was "on a special assignment for Polk County." When Long asked Miller if he could go feed his bulls, Miller told him, "You need to stay here." Miller later acquiesced when Long asked if he could clean his feed bunks. When Long then asked to leave the property, Long claims Miller told him he had "better stay here or I'll cuff you and throw you on the ground." Long claims he was calm and deferential to the authority asserted by Miller and that Miller was acting aggressively toward him. Miller claims Long was angry and aggressive. Miller believed that he was acting in his capacity as a peace officer and that he had the authority to arrest Long if he chose to do so.

Union County Sheriff's Deputy Steven Maitlen arrived at the Long property and told the hunting party to leave. Long allowed the deputy to search his truck and informed him that although he had a gun, he had not fired it. In the cab of his truck, Long had the dismantled barrel of a shotgun that he said he used for

holding down pieces of mail. The deputy allowed Long to resume his chores and left the property without taking further action.

After Deputy Maitlen left the scene, Long said he wrote down the name Addacovich and the badge number he believed he saw, number 178. Long called the Polk County Sheriff's Office and learned there was no Officer Addacovich in the office.[2] No officer was issued badge number 178. However, badge number 78 belonged to Miller.

On November 27, 2007, Long filed a petition against Lauffer and Miller, seeking damages for trespass, slander, malicious prosecution, abuse of process, assault, false arrest/imprisonment, and intentional or reckless infliction of emotional distress. He also sought temporary and permanent injunctive relief. Both Lauffer and Miller timely answered, denying Long's claims and asserting affirmative defenses.

In March 2009, both defendants filed motions for summary judgment. In his resistance, Long voluntarily dismissed the claims of slander, malicious prosecution, and abuse of process against Miller, and his claims of trespass, malicious process, abuse of discretion, assault, and false arrest/imprisonment against Lauffer. The district court granted summary judgment on the claims of intentional infliction of emotional distress and the request for an injunction. The court denied Miller's motion for summary judgment with respect to the assault, false imprisonment, and trespass claims, and denied Lauffer's motion with respect to the slander claim. These claims proceeded to a bench trial.

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[2] Captain Greg Peterman testified that the Polk County sheriff's department did employ brothers with the last name Addavich.

On November 20, 2009, the district court entered judgment in favor of the defendants on Long's remaining claims. Long filed a notice of appeal on December 16, 2009.

II. Scope and Standard of Review.

When reviewing the judgment of a district court after a bench trial, "our review is for correction of errors at law." *Hansen v. Seabee Corp.*, 688 N.W.2d 234, 237 (Iowa 2004). The trial court's findings have the effect of a special verdict and are binding if supported by substantial evidence. *Id.* Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *Id.* In contrast, the trial court's legal conclusions are not binding, but we will construe them broadly in favor of upholding the judgment. *Id.* at 238.

District courts enjoy broad discretion concerning the admissibility of evidence. *Horak v. Argosy Gaming Co.*, 648 N.W.2d 137, 149 (2002). We reverse only if the court "clearly abused its discretion to the prejudice of the complaining party." *Id.*

III. Analysis.

Long assigns two errors to the district court. First, he contends the court abused its discretion in admitting testimony from Captain Greg Peterman regarding Deputy Miller's reputation for honesty and in admitting Peterman's expert opinion regarding Miller's authority to detain or arrest Long when Miller was off-duty and hunting in Union County. Second, Long asserts the evidence he presented at trial requires us to reverse the district court's judgments in favor of the defendants on each of his claims.

A. Evidentiary Issues.

At trial, Miller called Greg Peterman, his supervising officer at the Polk County Sheriff's Office at the time of the incident, to testify. Miller's counsel questioned Peterman about Miller's reputation for truthfulness. Peterman also testified as an expert witness in law enforcement procedures, opining that Miller had the authority to arrest or detain Long. Long contends the district court erred in allowing both lines of questioning.

1. Reputation for Truthfulness.

At trial, defense counsel asked Peterman if he had formed an opinion as to Miller's reputation for truth and veracity, and what that opinion was. Over Long's objection, Peterman answered, "As a supervisor I would say Deputy Miller has a good reputation, and I do not believe that he has a disciplinary history with the sheriff's office." Long contends the district court erred in allowing this portion of Peterman's testimony because, as an expert witness, Peterman was not allowed to testify regarding Miller's truthfulness. Long cites *State v. Myers*, 382 N.W.2d 91, 97 (Iowa 1986), in support of his argument.

In *Myers*, a criminal defendant appealed his conviction for indecent contact with a child based on expert witness testimony that children rarely lie about sexual abuse. *Myers*, 382 N.W.2d at 92-93. Our supreme court found the admission of such testimony to be an abuse of discretion that unfairly prejudiced the defendant because the testimony improperly suggested the child was telling the truth and, consequently, the defendant was guilty. *Id.* at 97-98. In that instance, the testimony crossed the line between opinion testimony that would be

helpful to the jury and that which conveys a conclusion concerning the defendant's guilt. *Id.* at 98.

The case at bar is distinguishable from *Myers*. Here, Peterman was not testifying as an expert on credibility. He was giving his lay opinion of Miller's reputation for truthfulness within their workplace as a character witness. Miller's honesty was called into question by claims that he introduced himself to Long by using a false name of Officer Addacovich when he approached and showed his badge. Moreover, the question of whether Miller gave a false name is not dispositive to the ultimate fact issue of whether Miller committed false arrest/imprisonment, assault, or trespass.

Iowa Rule of Evidence 5.608 allows evidence of the truthful character of a witness after the witness's credibility has been attacked. Our supreme court has set forth strict foundational requirements that must be met before reputation testimony bearing on the credibility of a witness may be properly introduced. *State v. Caldwell*, 529 N.W.2d 282, 286 (Iowa 1995). Before reputation testimony may be given, the proponent must establish the following facts:

> (1) The background, occupation, residence, etc., of the character witness, (2) [The witness's] familiarity and ability to identify the party whose general reputation was the subject of comment, (3) Whether there have in fact been comments concerning the party's reputation for [truthfulness or untruthfulness], (4) The exact place of these comments, (5) The generality of these comments, many or few in number, (6) Whether from a limited group or class as opposed to a general cross-section of the community, (7) When and how long a period of time the comments have been made.

Id. (quoting *State v. Hobbs*, 172 N.W.2d 268, 272 (Iowa 1969)).

Character evidence is not limited to a witness's reputation in the community at large; our court has recognized one's reputation may be better known where a person works rather than where a person resides. *Id.* The cross-section requirement is met if the reputation testimony is based on comments from a representative number of persons who know of the reputation for truthfulness or untruthfulness of the target of the testimony through association with that person in that person's work. *Id.* Long did not object to Miller's testimony as lacking in foundation; he simply argued that it was improper expert testimony. But in addition to his expert-witness testimony, Peterman testified as a fact witness regarding the investigation into the allegations of Miller's wrongdoing. Because Peterman's testimony falls within the scope of rule 5.608 and does not go to an ultimate fact, the court did not abuse its discretion in allowing Peterman to offer character evidence.

Even assuming the district court improperly admitted the disputed testimony, we find any error to be harmless. Although the rules of evidence apply equally to both bench and jury trials, the rules do not need to be as strictly applied in bench trials. *State v. Farnum*, 397 N.W.2d 744, 746 (Iowa 1986) (citing E. Cleary, *McCormick's Handbook of the Law of Evidence* § 60, at 137-38 (2nd ed. 1972) (noting that law of evidence is a "product of jury system where ordinary untrained citizens are acting as judges of fact")). One question regarding Miller's reputation for truthfulness was not dispositive of the issues before the court. The court, as the fact finder, was in a sound position to

measure the witnesses' credibility and the single inquiry of Peterman would not sway the view of the experienced trial judge.

2. Opinion Evidence.

Long also contends the court erred in allowing Peterman to opine as to whether Miller had the legal authority to arrest or detain Long even though Miller was off duty and outside of Polk County. Long's attorney objected to the testimony, and the following exchange took place:

> Mr. Anderson: Your Honor, I would urge the same objections I previously had and would also point out to the Court just based on the questioning of—of Mr. Kuhle that this witness has said he contacts other people to get their advice, plus he's testified that he has no training on this particular issue. So the very foundation question that was asked by Mr. Kuhle—there is—there is no training to this witness.
>
> Mr. Kuhle: Your Honor, what a person could do doesn't mean that he has to do it. And not only lawyers can be experts on what they do. The man is a certified peace officer with 24 years' experience.
>
> The Court: I'll allow the question and answer based upon his experience.

Long argues Peterman was not qualified to give expert testimony regarding Miller's ability to arrest Long while Miller was off duty.

Iowa Rule of Evidence 5.702 allows opinion testimony by "a witness qualified as an expert by knowledge, skill, experience, training, or education." A witness's ability to testify as an expert is determined in reference to the topic under examination. *Hyler v. Garner*, 548 N.W.2d 864, 868 (Iowa 1996). The witness must be qualified to answer the particular question propounded. *Id.* However, the witness need not be a specialist in the particular area of testimony

so long as the testimony falls within the witness's general area of expertise. *Mensink v. Am. Grain*, 564 N.W.2d 376, 379 (Iowa 1997).

Officer Peterman testified that he is a deputy sheriff with the rank of captain and had been employed by the Polk County Sheriff's Office for twenty-four years. He is a graduate of the Iowa Law Enforcement Academy and attends annual in-service training to stay certified as a peace officer. With regard to the specific issue of off-duty conduct, he testified he had never taught a class or done research in connection with that area, nor had he instructed or trained other officers on the policy of the sheriff's office regarding off-duty conduct. He was, however, familiar with the office policy.

We question the designation of Peterman as an expert on the issue of whether a peace officer has authority to make arrests while off duty. And although Long failed to object on the basis that the opinion reached a legal conclusion[3]—whether Peterman had the authority to detain or arrest Long—such testimony generally would be inadmissible on that basis. *See In re Detention of Palmer*, 691 N.W.2d 413, 419 (Iowa 2005) (observing that "a witness cannot opine on a legal conclusion or whether the facts of the case meet a given legal standard" because it is not helpful to jurors who will be instructed on the law by the trial court). In this bench trial, we find any error in admitting the opinion testimony was harmless. As an expert in legal matters itself, the trial court could

[3] Long's failure to raise the issue below and obtain a ruling by the district court precludes us from addressing it for the first time on appeal. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

determine whether Miller's actions were lawful without reliance on the opinions of an expert witness.

B. Sufficiency of the Evidence.

Long next contends the court erred in finding there was not substantial evidence to support his claims against the defendants.

1. Assault.

To succeed in his claim of assault against Miller, Long was required to prove by a preponderance of the evidence that Miller performed (1) an act intended to put Long in fear of physical pain or injury, or (2) an act intended to put Long in fear of physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act. *See* Iowa Civil Jury Instruction 1900.2; *see also* Iowa Code § 708.1 (2005) (defining assault). Long argues Miller's act of threatening to handcuff him and throw him to the ground was an assault.

Long testified regarding the specific encounter as follows:

> I was ready to feed my bulls, and time was past due on having fed them, and I asked him, I says, can't I just go down there and get my tractor and feed wagon at the shed? I pointed down the hill towards the shed. You can see it from that area. Not far at all. About a quarter of a mile. He said, no, you're going to stay here, or I'm going to cuff you and throw you to the ground. At that point, I was extremely intimidated. He raised his hand in the air like in a commanding fashion, like he absolutely wasn't going to take anymore. I tried three times to ask somebody to try to get something worked through, and this wasn't working.
>
> Q. Now, when he said that to you, that he would throw you to the ground and cuff you if you didn't stay there, did it appear to you that he could act upon that—that he could act upon that?
>
> A. Certainly. He was a young man and in good physical condition, and knowing my age and physical ability, I was scared of him.

. . . .

Q. Now, you said about the assault. What are you referring to?

A. Well, I felt like I was assaulted down in the driveway when Officer Miller, as we know him now, said he was going to cuff me and throw me to the ground, and he acted belligerent towards me finishing my chores or my activity.

. . . .

Q. Did he show you any handcuffs?

A. No, sir.

Q. When he was talking to you, did he move toward you?

A. He held his hand up to address me and took possibly half a step and just acted aggressive about it.

Miller's recollection of the events differs. He testified:

Q. Did you ever raise your voice?

A. No, I did not.

Q. Did your tone of voice change other than to be authoritative?

A. No, I did not.

. . . .

Q. In the entire time you were there, did you raise your hand to him?

A. No, I did not. That would be foolish.

Q. Why is that?

A. Tactically that would be very dumb to do because when I raise my arm above my head like he demonstrated—which I did not do—it would leave my vital organs exposed, plus it would decrease my reactionary speed. That's—Whenever I deal with someone who seems upset or—like at work, I always keep my hands at waist level, clasped in front of me.

. . . .

Q. Did you ever throw him to the ground?

A. No, I did not.

Q. Did you tell him you would throw him to the ground?

A. No, I did not.

The facts are in dispute as to what occurred when Miller encountered Long in the driveway. The district court found the defense witnesses more credible than Long and gave greater credence to their testimony. As the trier of fact, the district court had the prerogative to determine which witnesses to

believe. *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996). Because the court had a better opportunity to evaluate the credibility of the witnesses, factual disputes depending heavily on such credibility are best resolved by the district court. *Id.* This court does not assume the task of weighing the evidence or credibility of the witnesses, but determines whether substantial evidence supports the district court's findings according to those witnesses whom the court believed. *Id.*

Substantial evidence supports the district court's finding that no assault occurred. A reasonable factfinder could find Miller's account of what occurred more credible. Because Long failed to prove Miller's actions intended to put him in fear of physical pain or injury, we affirm the district court's ruling in favor of Miller on the assault claim.

2. False Imprisonment.

Long next contends the court erred in finding in favor of Miller on his false imprisonment/arrest claim. False imprisonment is the unlawful restraint of an individual's personal liberty or freedom of locomotion. *Zohn v. Menard, Inc.*, 598 N.W.2d 323, 326 (Iowa 1999). False arrest is one way of committing the tort of false imprisonment. *Children v. Burton*, 331 N.W.2d 673, 678 (Iowa 1983). To succeed on his claim, Long was required to prove Miller (1) detained or restrained him and (2) the detention or restraint was unlawful. *See id.* Detention or restraint does not need to be accomplished by physical force or threats of physical force. *Id.* at 327. Confinement can also result from submission to asserted legal authority. *Id.*

Long argues there is ample evidence both to find that Miller detained him against his will and that the detention was unlawful. The district court ruled that

> Defendant Miller was acting in an official capacity and had a reasonable belief that Plaintiff was shooting a small-caliber handgun, honking his horn, and was driving carelessly; and, therefore, his actions were reasonable in light of the circumstances and were lawful in light of the circumstances and do not constitute false imprisonment or false arrest.

Miller does not dispute that he detained Long. The question is whether the detention was lawful. Substantial evidence supports the district court's finding that the detention was lawful.

Iowa peace officers are authorized to make arrests outside the territorial limits of the municipality where they are employed if they have reasonable cause to believe a traffic offense has occurred. *State v. Snider*, 522 N.W.2d 815, 817 (Iowa 1994). Moreover, Iowa Code section 804.7 (2005) governs the ability of peace officers to make arrests and does not delineate between on-duty and off-duty peace officers. But we do not have a case interpreting whether section 804.7 empowers off-duty peace officers to act under their official authority to make an arrest. Courts from other jurisdictions are divided on the question whether an off-duty officer can discharge his official duties. Many courts have held that off-duty police officers have authority to effect an arrest if crimes are committed in their presence. *See, e.g., Meyers v. State,* 484 S.W.2d 334, 339 (Ark. 1972) (holding that a police officer's right to arrest is not limited to on-duty hours); *Lande v. Menage Ltd. P'ship,* 702 *A*.2d 1259, 1261 (D.C. 1997) (holding that police officers are always on-duty, whether in or out of uniform, and required to take police action when crimes are committed in their presence); *Tapp v.*

State, 406 N.E.2d 296, 302 (Ind. Ct. App.1980) (noting it is the nature of the acts performed and not whether the police officer is on- or off-duty which determines whether the officer is engaged in the performance of his official duties); *State v. Gebbia*, 998 A.2d 567, 571 (N.J. Super. 2010) (holding off-duty officer had ability to issue citation for violation of municipal ordinance); *State v. Graham*, 927 P.2d 227, 232 (Wash. 1996) (finding public policy served by the rule that a police officer is a public servant who has authority to act whenever the officer reasonably believes a crime is committed in his presence, whether on duty or off duty). Other courts have held officers working outside an official police assignment are not performing a public duty. *See, e.g., In re J.J.C.*, 854 P.2d 801, 807 (Colo. 1993) (concluding off-duty officer not acting under color of official authority when serving a private employer); *State v. Palms*, 592 S.W.2d 236, 238 (Mo. Ct. App. 1979) (holding officer must be engaged in active duty to possess all police powers). We do not need to reach the question whether an off-duty peace officer may make an arrest under section 804.7 because Miller had authority to detain Long under Iowa Code section 804.9.

Section 804.9 allows a private person to make an arrest if a public offense is committed or attempted in their presence. If the conduct amounts to something less than a technical arrest, it is not thereby less lawful. *State v. Lloyd*, 513 N.W.2d 742, 744 (Iowa 1994) (noting that detention could be lawful if authority existed to actually make an arrest). In *Lloyd*, our supreme court held an out-of-state law enforcement officer could validly detain a driver suspected of operating while intoxicated. *Id.* at 745. Under the facts of that case, Officer

Sandage, a police officer from South Dakota, observed Lloyd driving without taillights while in South Dakota. *Id.* at 742. He attempted to pull him over but they had entered into Iowa before Lloyd stopped. *Id.* at 742-43. The officer then gave Lloyd a warning ticket for driving without taillights and also cited Lloyd for an expired license plate. Because Lloyd appeared intoxicated, Officer Sandage called an Iowa officer and detained Lloyd until he arrived. *Id.* at 743. In affirming the district court's denial of Lloyd's motion to suppress, the supreme court analyzed the officer's authority to make a citizen's arrest:

> Officer Sandage could have made a valid citizen's arrest for Lloyd's failure to have lighted taillights and for his expired registration. More important, after the stop of Lloyd's vehicle, officer Sandage could have taken Lloyd into custody on the basis of his belief that Lloyd was operating his truck "[w]hile under the influence of an alcoholic beverage or other drug or combination of such substances." Iowa Code § 321J.2(1)(a). Officer Sandage's decision to detain Lloyd while he called in an Iowa officer for the suspected OWI violation constituted prudent and commendable conduct, not an unlawful detention or arrest.

Id. at 744. The court went on to conclude Officer Sandage's use of authority did not invalidate his ability to make an arrest under the citizen's arrest provisions of the Iowa Code. *Id.* at 744-45.

Miller did not place Long under arrest, but merely detained him for a matter of minutes before a local law enforcement officer arrived. Miller believed that a public offense had been committed in his presence given that Long had been driving at a high rate of speed near the hunters, had been honking his horn, and may have been shooting a gun at them.

Long argues the detention was unlawful because Miller acted as a private person, not as law enforcement. As stated above, Miller had the authority to

make a valid arrest as a private citizen. Long also argues Miller's use of a false name invalidates the detention. Miller disputes that he used a false name. We conclude substantial evidence supports the district court's finding he did not.

Because substantial evidence supports the district court's finding Miller did not falsely imprison or arrest Long, we affirm judgment in favor of Miller on this claim.

3. Trespass.

Long next contends the court erred in concluding Miller did not trespass onto his property. Anyone who intentionally and without consent enters land in possession of another is liable as a trespasser to the other irrespective of whether harm is caused to any legally protected interest. Restatement (Second) of Torts § 158 at 277 (1964). A trespasser is one who is not rightfully upon the property of another, but enters it without consent, either express or implied, of the owner or occupier. *Iowa State Highway Comm'n v. Hipp*, 259 Iowa 1082, 1089, 147 N.W.2d 195, 199 (1966).

In rejecting the trespass claim, the district court held:

> It is undisputed that Defendant Miller entered Plaintiff's property on December 6, 2006. The Court finds that Defendant Miller had a lawful purpose for entering the Plaintiff's land to detain Plaintiff for the Union County deputy and cannot be held liable for trespass. The Court further finds that Defendant Miller was acting in an official capacity as a certified Iowa peace officer.

When an officer has entered private property to investigate a complaint that a crime has been committed, the officer ordinarily has not committed a trespass. *See State v. Van Rees*, 246 N.W.2d 339, 343 (Iowa 1976). "Conduct otherwise a trespass is often justifiable by reason of authority vested in the

person who does the act, as, for example, an officer of the law acting in the performance of his duty." *Id.* (quoting 75 Am. Jur. 2d Trespass § 43, at 38 (1974)). Because Miller had authority to detain Long until local law enforcement arrived, the district court could conclude his conduct did not constitute trespass.

We affirm the district court's ruling in favor of Miller on Long's trespass claim.

4. Slander.

Finally, Long contends the court erred in determining Lauffer did not commit slander when he falsely stated Long was shooting his gun at the hunting party. Slander occurs when one makes an oral statement which tends to injure a person's reputation or good name. *Lara v. Thomas*, 512 N.W.2d 777, 785 (Iowa 1994). To prevail in an action for slander a plaintiff must prove either that the published statement was slanderous per se (based on the very nature of the language used) or that the publication caused actual harm to the plaintiff's reputation. *Id.* Statements that are an attack on the integrity and moral character of a party or affect a person in his or her business, trade, profession, or office are slander per se and do not require proof of malice, falsity, or special harm. *Id.* If it is necessary to refer to facts or circumstances beyond the words actually used to establish defamation, the statement is libelous per quod and requires proof of damages. *Johnson v. Nickerson*, 542 N.W.2d 506, 510 (Iowa 1996).

A communication is covered by a conditional or qualified privilege when it is made in good faith on any subject matter in which the person communicating

has an interest or with reference to which he or she has a duty to perform, and to another person having a corresponding interest or duty. 50 Am.Jur.2d *Libel & Slander* § 258, at 600 (2006); *see Theisen v. Covenant Med. Ctr, Inc.*, 636 N.W.2d 74, 84 (Iowa 2001); *Kiray v. Hy-Vee, Inc.,* 716 N.W.2d 193, 200 (Iowa Ct. App. 2006). A qualified privilege may be lost, however, if it is abused. *Kiray*, 716 N.W.2d at 200.

The district court found Long failed to prove Lauffer slandered him, reasoning:

> Plaintiff has not demonstrated that the statements made by Defendant Lauffer in the 911 phone calls have affected his business. Mere speculation or conjecture is insufficient to demonstrate injury to Mr. Long's business. Therefore, the statements made by Defendant Lauffer were not slander per se.
>
> Now this claim was the subject of a motion for summary judgment earlier in this case, and on October 8, 2009, this Court ruled on Defendants' motion for summary judgment on this slander claim. Without having all of the evidence that was provided to this Court throughout this trial, the Court—this Court found that the Lauffer statements were made with malice because they were made with disregard to whether they were true or false. However, after hearing all of the evidence offered at trial, the Court finds that the Lauffer statements made on the 911 calls were without malice and that the statements are privileged and that judgment be entered in favor of Defendant Lauffer.

There is substantial evidence in the record from which the district court could conclude Lauffer had a qualified privilege for the statements made to 911. Lauffer was one of the hunters involved in the 2000 incident for which Long was charged with disrupting a hunt. On December 6, 2006, Lauffer saw Long shortly after hearing small-arms gunfire. Long was honking his horn. Lauffer was concerned that Long was firing at his hunting group again. Someone in the hunting party said he could not reach Jerry Young on his phone. Lauffer was

scared Long had shot Young and called 911. Long asserts the assumption that he fired the shots was "baseless." But given Lauffer's previous experience, it was not unreasonable for Lauffer to conclude Long was again shooting at his hunting party.

Substantial evidence supports the district court's finding that Lauffer established the elements of a qualified privilege. His statement was made in good faith. He had an interest in upholding his party's safety. The statements were limited to that purpose and were communicated only to law enforcement. Accordingly, the district court's finding of no slander is affirmed.

AFFIRMED.