IN THE COURT OF APPEALS OF IOWA

No. 1-992 / 11-0413
Filed January 19, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

McKINLEY DUDLEY JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Colleen D. Weiland (trial) and Christopher C. Foy (disposition), Judges.

Defendant appeals from judgment and sentences imposed upon his convictions of possession of methamphetamine third or subsequent offense as a habitual offender, possession of marijuana third or subsequent offense as a habitual offender, and interference with official acts inflicting injury. **AFFIRMED IN PART, VACATED IN PART, AND REMANDED.**

Mark C. Smith, State Appellate Defender, and Rachel C. Regenold, Assistant Appellate Defender, for appellant.

McKinley Dudley Jr., pro se.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant Attorney General, Carlyle D. Dalen, County Attorney, and Erica Clark, Assistant County Attorney, for appellee.

Considered by Danilson, P.J., and Tabor and Mullins, JJ.

DANILSON, P.J.

Defendant McKinley Dudley Jr. appeals from judgment and sentences imposed upon his convictions of possession of methamphetamine third or subsequent offense as a habitual offender, possession of marijuana third or subsequent offense as a habitual offender, and interference with official acts inflicting injury. Upon our review we conclude there was not substantial evidence Dudley inflicted injury. We also vacate the restitution order for attorney fees on one of the counts, and remand for entry of an order in an amount consistent with the maximum amount permitted for the offense. We affirm in part, vacate in part, and remand.

I. Background Facts and Proceedings.

A reasonable fact finder considering the evidence presented at trial could find the following: At about 1:00 a.m. on September 18, 2010, Mason City police officer Joshua Eernisse was in a marked patrol car and wearing his uniform. While he and student intern Dustin Hodson were investigating another call, they observed the defendant, McKinley Dudley Jr., riding a bicycle without a headlight.

Officer Eernisse parked his vehicle in a parking lot, got out, and asked Dudley to come over to the patrol car as he intended to inform Dudley it was against city ordinance to ride a bicycle without a headlight. Dudley turned his bicycle and started to ride toward the officer. Officer Eernisse asked Dudley to stop and talk. Dudley approached the officer, but continued riding. Officer Eernisse stated, "police, stop" and when Dudley continued to ride, the officer yelled "stop." Officer Eernisse grabbed Dudley's arm. Dudley kept riding. Officer Eernisse tackled Dudley off the bike and in doing so suffered an abrasion

to his right knee. Officer Eernisse then placed Dudley in handcuffs and searched him, finding marijuana and methamphetamine.

Dudley was subsequently charged with possession of methamphetamine, third or subsequent offense as a habitual offender; possession of marijuana, third or subsequent offense as a habitual offender; interference with official acts resulting in injury; and public intoxication. He filed a written arraignment entering a not guilty plea on October 4, 2010.

On November 30, the court was advised Dudley wished to enter a change of plea. However, at the guilty plea hearing held on December 13, Dudley did not provide a factual basis for a plea of guilty. As a result, the plea was not accepted, and the court ordered trial be scheduled.

On December 20, 2010, Dudley filed a pro se request to dismiss. The court denied the motion, concluding the Dudley's right to a speedy trial had not been violated.

At trial presided by Judge Weiland, Officer Eernisse and the student intern Dustin Hodson testified. Following the State's case in chief, counsel for Dudley moved for judgment of acquittal, contending in part the State had failed to prove the Dudley "inflicted bodily injury on the officer." The State responded,

> The defendant was given an order and not only refused to obey it, but then attempted to flee from the scene and officer was injured in pursuing him. So the State believes that Count III is sufficient to submit to the finder of fact.

The court found the evidence viewed in the light most favorable to the State was sufficient to go to the jury.

Dudley testified he was riding a bicycle, which did not have a headlight on it. He stated the officer told him to get out of the street, but denied the officer told him to stop. He acknowledged he realized it was a police officer when he "turned around." Dudley's counsel asked:

> Q. Okay. So how much time passed between when you realized he was a police officer and when you got tackled? A. Well, as soon as I got turned around, I seen the police car and I knew he was a policeman. By the time I did that, he was right there on me then. He jumped on me. When he hit me first, then he knocked me down to the ground.
>
> . . . .
>
> Q. Did you intend to hurt the officer? A. How did I hurt him? He was hurting me.
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> Q. Did you want to hurt the officer? A. What do I want to hurt him for? Look, I was minding my business. That man come to me and jumped on me.
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> Q. You mentioned that you injured your knee during that. A. He did it. If he would've never jumped on me, it would have never happened.

The defense renewed the motion for judgment of acquittal, arguing again the State had failed to prove Dudley "inflicted" an injury. The court again denied the motion.

During discussion of the proposed jury instructions, the following occurred:

> MS. BOEHLJE: . . . I guess the one thing we had talked about off the record was the term "inflicted," that it would be nice to have some definition of that, but since we don't have a uniform instruction on it and the courts aren't very good at addressing what exactly we need to say so we are kind of leaving it the way it is in the stock instruction and recognizing that it's a potential problem.
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> . . . .
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> THE COURT: . . . [L]et me back up and reflect on what Ms. Boehlje just said about the inflict, which is in regard to the count of interference with official acts inflicting bodily injury. All of us recognizing that there's no statutory definition of inflict; that there is no case law that discusses what "to inflict" means or what kind of action has to be taken to be inflicting; or whether it would, depending on the circumstances, apply in this case; that there's no uniform definitional instruction of inflict; and there is really no

> guideline or guidance from case law as to what such a definitional instruction would look like. And so the parties have decided to leave that to the jury and not request definitional instruction in regard to that term.

The jury did request a definition of "inflicted" as anticipated. The court sent this response: "The law does not specifically define 'inflict[ed]' as it relates to this charge. Please refer generally to the jury instructions as a whole for guidance in rendering your verdict[s]."

Instruction No. 18 provided:

> Regarding Count III, the State must prove all of the following elements of Interference With An Official Act *Resulting* in Bodily Injury:
>
> 1. On or about the 18th day of September, 2010, the defendant:
>
> a. knew Josh Eernise was a peace officer who was acting within the scope of his lawful duty or authority, or
>
> b. knew Josh Eernise was serving or executing criminal process.
>
> 2. The defendant knowingly resisted or obstructed Josh Eernisse in acting within the scope of his lawful duty or authority.
>
> 3. The defendant inflicted a bodily injury.
>
> If you find the State has proved all of the elements, the defendant is guilty of Interference With An Official Act *Resulting* in Bodily Injury. If the State has failed to prove element 3, the defendant is guilty of Interference with Official Acts. If the State has failed to prove element 1 or 2, the defendant is not guilty.

(Emphasis added.) The verdict forms for Count III also referred to the offense as interference with an official act *resulting* in bodily injury.

The jury returned verdicts finding Dudley guilty of both drug offenses, guilty "of interference with official acts resulting in bodily injury," but not guilty of public intoxication. Dudley now appeals.

Counsel for Dudley contends (1) there was insufficient evidence to sustain the interference with official acts conviction and (2) the court erred in ordering

reimbursement of attorney fees in excess of the fee limitation found in Iowa Code section 815.14 (2011). Dudley also submitted a pro se brief asserting claims of ineffective assistance of counsel and a violation of his speedy trial rights.

II. Scope and Standard of Review.

We review sufficiency-of-the-evidence claims for correction of errors of law. *State v. Hennings*, 791 N.W.2d 828, 832 (Iowa 2010). A jury's verdict is binding upon us if there is substantial evidence to support it. *Id.*

This court reviews sentences imposed in a criminal case for correction of errors at law. Iowa R. App. P. 6.907; *State v. Formaro,* 638 N.W.2d 720, 724 (Iowa 2002). "We will not reverse the decision of the district court absent an abuse of discretion or some defect in the sentencing procedure." *Formaro,* 638 N.W.2d at 724.

Finally, we review ineffective-assistance-of-counsel claims, which are of a constitutional nature, de novo. *Ledezma v. State*, 626 N.W.2d 134, 141 (Iowa 2001).

III. Sufficiency of the Evidence of Interference with Official Acts, Inflicting Bodily Injury.

Dudley was charged with a violation of Iowa Code section 719.1 (2009), which provides:

> A person who knowingly resists or obstructs anyone known by the person to be a peace officer . . . , in the performance of any act which is within the scope of the lawful duty or authority of that officer . . . , commits a simple misdemeanor. . . . However, if a person commits an interference with official acts, as defined in this subsection, *and in so doing inflicts bodily injury* other than serious injury, that person commits an aggravated misdemeanor. If a person commits an interference with official acts, as defined in this subsection, and in so doing inflicts or attempts to inflict serious injury, or displays a dangerous weapon, as defined in section

> 702.7, or is armed with a firearm, that person commits a class "D" felony.

(Emphasis added.)

Dudley contends the use of the term "inflicting injury" requires the injury be directly caused by an act of the defendant. The State responds that all that is required is the defendant's acts created the "condition that increased the likelihood of forceful detention causing bodily injury." We disagree with the State's reading of this statutory provision.

> The primary goal in interpreting a statute is to ascertain and give effect to the legislature's intent. When determining legislative intent, we look first to the language of the statute. We also consider the statute's subject matter, the object sought to be accomplished, the purpose to be served, underlying policies, remedies provided, and the consequences of various interpretations. Legislative intent is gleaned from the words chosen by the legislature, not what it should or might have said. When a statutory definition is absent, we may refer to prior decisions of this court and others, similar statutes, dictionary definitions, and common usage to determine its meaning.

State v. Soboroff, 798 N.W.2d 1, 6 (Iowa 2011) (internal citations and quotations omitted).

The purpose behind the interference with official acts statute is to "enable officers to execute their peace-keeping duties calmly, efficiently, and without hindrance." *State v. Buchanan,* 549 N.W.2d 291, 294 (Iowa 1996). Our supreme court has interpreted the statute in *State v. Smithson,* 594 N.W.2d 1, 2-3 (Iowa 1999), noting the language chosen conveys the idea of "*active interference*." *Smithson*, 594 N.W.2d at 2 (emphasis added).[1]

[1] The court noted the terms "resist" and "obstruct" imply active interference. *Smithson,* 594 N.W.2d at 2. They therefore do not "include verbal harassment unless the verbal harassment is accompanied by a present ability and apparent intention to

These principles guide our interpretation of the undefined term of "inflict." *See Soboroff*, 798 N.W.2d at 6. Because there is no statutory definition of "inflict," we look to their ordinary meaning. *See id.* The dictionary definition of "inflict" is "to deal out or mete out (something punishing or burdensome); impose." *The American Heritage College Dictionary*, 712 (4th ed. 2004). This term connotes an intentional, directed action on the part of the actor. *See People v. Rodriguez*, 69 Cal. App. 4th 341, 347, 81 Cal. Rptr. 2d 567, 571 (1999) (in a scenario very similar to the one before us where an officer was injured after tackling a suspect on a bicycle, the court found that "[t]o 'personally inflict' an injury is to directly cause an injury, not just to proximately cause it").

The State's argument is that resulting injury is sufficient. But the statutory language at issue here does *not* state that one who knowingly resists or obstructs a peace officer and in so doing "causes" or "results in" bodily injury. If the legislature intended a resulting injury to be sufficient, it could have used the terms "causes" or "resulting in" as it has in other statutes. *See*, *e.g.*, Iowa Code § 726.6 ("A person who commits child endangerment *resulting in bodily injury* to a child or minor or child endangerment in violation of subsection 1, paragraph "g", that does not result in a serious injury, is guilty of a class "D" felony." (emphasis added)); *see also id.* § 707.5(1) ("A person commits a class 'D' felony when the person *unintentionally causes* the death of another person by the commission of

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execute a verbal threat physically." Iowa Code § 719.1(3). The *Smithson* court thus concluded a single failure to turn down music at the request of a police officer did not constitute a violation of the statute. *Smithson*, 594 N.W.2d at 3; *see also State v. Lewis*, 675 N.W.2d 516, 526 (Iowa 2004) (noting that where an officer was not authorized to detain individuals as he did not have probable cause to believe a crime was being committed, "the mere act of quickly walking away from the officer and ignoring his directions to stop under the circumstances is not interference with official acts").

a public offense other than a forcible felony or escape." (emphasis added)). Thus we can only conclude the legislature intended a different definition for the term "inflict," a definition that does not equate to the terms "resulting" or "causes."

We note, too, that section 719.1 establishes a gradation of culpability: it is a simple misdemeanor to "knowingly resist[] or obstruct[] anyone known by the person to be a peace officer"; an aggravated misdemeanor if the person "in so doing inflicts bodily injury other than serious injury"; and a class "D" felony if the person "in so doing inflicts or attempts to inflict serious injury." *Id.* § 719.1(1). The State's reading would impose increased culpability where the statute does not.

Here, the jury requested a definition of "inflict" and the court told the jury to "refer generally to the jury instructions as a whole for guidance."[2] Instruction No. 18 accurately states the State must prove the defendant "inflicted a bodily injury." The correct name of the crime should have been interference with an official act, inflicting bodily injury. *Cf. State v. Palmer*, 791 N.W.2d 840, 851 (Iowa 2010) ("However, after properly delineating the elements of this crime, the instruction erroneously states the name of the crime by referring to it as, *interference with an official act causing bodily injury* in the first full paragraph after numbered paragraph three. The correct name of the crime in that paragraph should have been, interference with an official act of a correctional officer,

[2] Our supreme court has observed that

> [a] number of courts have held that if the jury expresses confusion or lack of understanding of a significant element of applicable law, it is the court's duty to give an additional instruction. The refusal of a jury's request for an additional request . . . may constitute reversible error.

State v. Martins, 569 N.W.2d 482, 485 (Iowa 1997) (citations omitted). However, we acknowledge there are many circumstances where simply rereading the instructions will provide the illumination the jury requires.

inflicting or attempting to inflict bodily injury."). But the instruction twice misnames the offense "interference with an official act *resulting* in bodily injury." That same misnomer is found in the verdict forms. Thus the jury was erroneously directed to instructions that misnamed the offense and implied any act resulting in injury was sufficient to convict Dudley.

The State was required to prove more than that Dudley's resistance resulted in bodily injury. The State was required to show some affirmative action by Dudley directed at the officer caused the officer bodily injury. The State does not assert the evidence would be sufficient to establish such a standard. In some cases, the act in resistance or interference may also be an act inflicting injury.[3] However, here the act of resistance was failing to stop as beckoned by the officer and continuing to bike away without inflicting any injury. The officer chose to halt the resistance or interference by tackling Dudley on a moving bicycle. An injury may have resulted to the officer, but it was not inflicted by Dudley. We vacate judgment and sentence imposed upon the conviction of interference with official acts inflicting injury. Given that the district court imposed concurrent sentences on the three counts involved in this case, which were to be served "concurrently with any other sentences pending," we find no interconnected sentencing arrangement that would require vacation of sentences imposed upon the other two counts.[4] We remand for entry of judgment on the lesser-included offense of interference with an official act, a simple misdemeanor, and resentencing on that

[3] *See, e.g., Whaley v. State*, 843 N.E.2d 1, 11 (Ind. App. 2006) (finding deputies' injuries were directly related to and caused by Whaley's resisting arrest).

[4] Count III of the trial information, the interference charge, carried the least penalty of the three offenses and there is no reason to believe the district court judge would choose a different disposition for the two greater offenses by our decision herein.

count. *See State v. Keutla*, 798 N.W.2d 731, 735 (Iowa 2011) ("Generally, in criminal cases, where an improper or illegal sentence is severable from the valid portion of the sentence, we may vacate the invalid part without disturbing the rest of the sentence.")

IV. Restitution Order. The district court's order of judgment and sentence on Count II, possession of marijuana, third or subsequent offense as an habitual offender, includes an order that Dudley pay $1560 in attorney fees. The State concedes the court entered an illegal sentence by ordering him to pay attorney fees in excess of the $1200 statutory fee limitation. *See* Iowa Code § 815.14; Iowa Admin. Code r. 493–12.6; *State v. Dudley,* 766 N.W.2d 606, 622 (Iowa 2009). We vacate that portion of the judgment and remand for entry of a restitution order for the attorney fees in the amount of $1200.

V. Pro Se Claims.

A. Sentencing enhancements. Dudley contends he was improperly convicted of felonies where he possessed amounts of marijuana and methamphetamine that would only sustain misdemeanor convictions. But Dudley's convictions are subject to enhanced sentences under both Iowa Code chapters 124 and 902.

> The legislature classifies a violation of section 124.401(5) as either a misdemeanor or felony based on a defendant's prior drug-related convictions. Iowa Code § 124.401(5). If the defendant has no prior drug-related convictions, a violation of section 124.401(5) is a serious misdemeanor. *Id.* If the defendant has one prior drug-related conviction, a violation of section 124.401(5) is an aggravated misdemeanor. *Id.* If the defendant has two prior drug-related convictions, a violation of section 124.401(5) is a class "D" felony. *Id.* Because [the defendant] had two prior drug-related convictions, section 124.401(5) classified his violation as a class "D" felony. . . .

> . . . Under the same sentencing scheme, a habitual offender shall be confined no more than fifteen years. *Id.* § 902.9(3). A habitual offender includes any person convicted of a class "D" felony who has twice before been convicted of a felony. *Id.* § 902.8.

State v. Maxwell, 743 N.W.2d 185, 190-91 (Iowa 2008). Dudley's offenses were classified as class "D" felonies pursuant to section 124.401(5) based on his prior drug-related convictions, as well being a habitual offender under section 902.9(3). *See id.* at 192.

B. Ineffective assistance of counsel. Dudley also contends he received ineffective assistance of counsel in several respects, only one of which we find the record adequate to address. *See State v. Bearse*, 748 N.W.2d 211, 214 (Iowa 2008) (noting that unless the record on direct appeal is adequate to address these issues, a claim of ineffective assistance of counsel is generally preserved for postconviction proceedings).

Dudley contends trial counsel was ineffective in failing to allege a violation of his speedy trial rights. But when Dudley indicated on November 30, 2010, that he planned to plead guilty, and asked for the case to be set for further proceedings to enter a guilty plea, he effectively waived his right to trial and his right to a speedy trial. *See* Iowa R. Crim. P. 2.8(2)(*b*)(4) (stating when a defendant enters a guilty plea, the defendant waives the right to be tried by a jury); *State v. Belieu,* 314 N.W.2d 382, 384 (Iowa 1982) (noting when defendant pled guilty, he waived his right to trial and his derivative right to a speedy trial).

We have previously stated:

> Once a defendant indicates the choice to forego trial by entering a guilty plea or advising the State that a plea of guilty is forthcoming, the case is removed from the trial calendar and the State

> discontinues trial preparations. There is little, if any, need for either the State or the defendant to prepare for trial.

State v. Warmuth, 532 N.W.2d 163, 166 (Iowa Ct. App. 1995).

When a court determines the guilty plea cannot be accepted, the ninety-day speedy trial period commences anew. *Warmuth,* 532 N.W.2d at 166 ("We hold the right to speedy trial may be reinstated by the withdrawal of the guilty plea or by the court's determination the guilty plea cannot be accepted."); *see also State v. Clark,* 351 N.W.2d 532, 535 (Iowa 1984) ("[T]rial was timely because it was commenced within ninety days of withdrawal of the guilty plea."). Thus, the ninety-day speedy trial period began anew on December 13, 2010, and his January 5, 2011 trial did not violate his speedy trial rights. Counsel had no duty to move to dismiss on speedy trial grounds. *See State v. Dudley*, 766 N.W.2d 606, 620 (Iowa 2009) (explaining that counsel has no duty to raise a meritless issue).

In summary, we vacate judgment of conviction for interference with official acts, inflicting bodily injury, and remand for entry of judgment on the lesser-included offense of interference with an official act, a simple misdemeanor, and resentencing. We also vacate the restitution amount ordered for Count II, and remand for entry of an order for restitution in the sum of $1200, the maximum sum for attorney fees for a class D felony.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.