

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,
Plaintiff-Appellee,

APPEAL NO. C-190370
TRIAL NO. 19CRB-9900

vs.

JUDGMENT ENTRY.

CHARLES WILLIAM JOHNSON,
Defendant-Appellant.

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Charles William Johnson entered a no-contest plea to obstructing official business in violation of R.C. 2921.31. At the plea hearing, the state indicated that the charge was based on the fact that “the police called out for the suspect to make himself known. The suspect refused and instead hid silently in a garbage can.” The trial court found Johnson guilty based on these facts and sentenced him to 31 days in jail.

In Johnson’s appeal, he raises a single assignment of error, arguing that there was insufficient evidence to convict him of obstructing official business because the facts do not demonstrate that he committed an “overt act,” and instead, only demonstrate that he “merely failed to act” by remaining silent when the police called out for him. The prosecution argues that Johnson’s overt act was contorting his body to fit in the garbage can and remaining silent to avoid detection. We agree with the prosecution.

In reviewing the sufficiency of the evidence to support a conviction, the relevant inquiry is whether, after viewing the evidence in a light most favorable to the

prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991); *State v. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229.

In order to obtain a conviction of a defendant who has pled no contest, the prosecution must offer an explanation of the circumstances to support the charge. This explanation is sufficient if it supports all the essential elements of the offense. *State v. Gilbo*, 96 Ohio App.3d 332, 645 N.E.2d 69 (2d Dist.1994).

R.C. 2921.31(A) provides that “[n]o person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official’s official capacity, shall do any act that hampers or impedes a public official in the performance of the public official’s lawful duties.”

A person cannot be guilty of obstructing official business by doing nothing or failing to act. Instead, a violation of R.C. 2921.31(A) requires an affirmative or overt act. *State v. Grice*, 180 Ohio App.3d 700, 2009-Ohio-372, 906 N.E.2d 1203, ¶ 9. In *State v. Lohaus*, 1st Dist. Hamilton No. C-020444, 2003-Ohio-777, this court held that there was sufficient evidence to support an obstruction charge where an officer was trying to make a lawful *Terry* detention and the defendant ran away from the officers.

We hold that Johnson’s act of hiding from police officers is similar to individuals that run or walk away from an officer who has a right to detain them. Here, Johnson had to act, by hiding in a garbage can, in order to prevent his arrest similar to the defendant in *Lohaus*, who had to run from police officers to prevent being detained.

Johnson argues that our holding in *Grice* supports his theory that he did not commit an overt act. In *Grice*, we held that a witness’s refusal to identify himself to the investigating officers was not an affirmative act under the obstruction statute. *Grice* at ¶ 10. But here Johnson was not merely refusing an officer’s request for information. Johnson had to climb into a garbage can to hide from police officers and then “remained silent” to avoid detection. Johnson’s actions are more similar to the defendant’s actions in *State v. Florence*, 12th Dist. Butler No. CA2013-05-070, 2014-Ohio-167. In *Florence*,

OHIO FIRST DISTRICT COURT OF APPEALS

the appellate court held that the defendant's act of hiding his girlfriend's car keys coupled with his refusal to hand them over to police was an affirmative act that supported his conviction for obstructing official business. *Id.* at ¶ 30-31.

Viewing the evidence in a light most favorable to the prosecution, we hold that, for purposes of the charged offense, Johnson's act of hiding in a garbage can coupled with his refusal to respond to police officers constituted an overt act. Accordingly, the single assignment of error is overruled, and the judgment of the trial court is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., BERGERON and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on February 28, 2020,
per order of the court_____.

Presiding Judge