

No. 1-10-0543

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|--------------------------------------|---|-----------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the       |
|                                      | ) | Circuit Court of      |
| Plaintiff-Appellee,                  | ) | Cook County.          |
|                                      | ) |                       |
| v.                                   | ) | No. 07 MC1 271897     |
|                                      | ) |                       |
| KEVIN SROGA,                         | ) | Honorable             |
|                                      | ) | Laura Marie Sullivan, |
| Defendant-Appellant.                 | ) | Judge Presiding.      |

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PRESIDING JUSTICE QUINN delivered the judgment of the court.  
Justices Cunningham and Harris concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Evidence that defendant drove several blocks in city traffic in a retired police vehicle with its oscillating lights flashing and with activated police radios in his vehicle, comprised evidence beyond a reasonable doubt that defendant was guilty of false personation of a public officer.
- ¶ 2 Following a bench trial, defendant was found guilty of false personation of a public officer and of several traffic offenses. The court sentenced defendant to concurrent jail terms of 30 days for false personation and driving on a revoked license and fined him \$515 for driving without insurance. We affirm.

¶ 3 The trial court simultaneously conducted both the trial and a hearing on defendant's motion to quash arrest and suppress evidence. Defendant proceeded *pro se*. The trial evidence included the following testimony that related to the charged offenses. Chicago police officer Joseph Papke testified that at about 9:55 p.m. on September 21, 2007, he, Officer Brian Sherman, and Sergeant McMasters were on patrol, heading westbound on Thomas near LeClaire. They observed defendant driving south on LeClaire "at an accelerated rate of speed" and noted that defendant had failed to stop at the stop sign at Thomas and LeClaire. Defendant's unmarked vehicle was equipped with oscillating lights that were activated. Believing defendant was an undercover officer possibly in need of assistance, the officers began to follow defendant's vehicle for about three or four blocks. Defendant failed to stop at another stop sign at Thomas and Augusta and then turned eastbound, again traveling at an accelerated rate of speed.

¶ 4 At Augusta and Cicero, defendant approached the traffic light with his oscillating lights still activated and stopped behind another vehicle. Papke and Sherman pulled their police car behind defendant's vehicle with the intent of assisting him with what they thought was a traffic stop. At that point, the officers observed that the license plate on defendant's vehicle was not a municipal plate. They ran his plate number on their computer and discovered the plate did not belong to that vehicle. When Papke and Sherman exited their vehicle and approached defendant, he deactivated his oscillating lights. Papke asked defendant for his driver's license and insurance card, but defendant was unable to produce either. The officers observed two Sabre police radios on the front seat next to defendant which were transmitting over the 15<sup>th</sup> and 25<sup>th</sup> police district frequencies. The officers asked defendant whether he was "on the job." Defendant stated he was a school teacher and taught shop at Farragut. When the officers determined defendant's driver's license had been revoked, he was placed under arrest. Defendant was also unable to provide valid registration for his vehicle. The officers later determined that the frequencies of all

25 Chicago police districts were set on each of the two radios. Defendant's vehicle had an operable siren, but it was not in operation. Defendant's arrest took place in Chicago's Austin district, a high crime area.

¶ 5 Officer Brian Sherman was called as a defense witness. His testimony about the events surrounding defendant's arrest was essentially the same as that of Officer Papke. Sherman also testified that the racial makeup of the Austin district was predominantly African American. Notably, defendant is white. In the trunk of defendant's vehicle, the officers found an air compressor labeled City of Chicago. Defendant told them it was from the school but that he did not have permission to take it. Sherman contacted defendant's immediate supervisor at Farragut Career Academy. Sherman later drove defendant's vehicle to the impounding facility.

¶ 6 Defendant testified that at the time in question on September 21, 2007, he was driving southbound on Leclaire and entered the intersection of Leclaire and Thomas traveling at the appropriate speed limit "between 15 to 20, 25 miles an hour, no faster than that." At the intersection of Augusta and Leclaire, he made a left-hand turn to travel eastbound toward the intersection of Augusta and Cicero. He waited for the light to turn green at that intersection for about 30 to 45 seconds. He noticed a marked vehicle that had pulled behind him rapidly and activated its emergency equipment. Officer Sherman approached him on the right side of his vehicle and asked if he was on the job. He replied no, he was a school teacher. Officer Papke asked him, "What the f\*\*\* are you doing in this neighborhood?" Defendant replied that he was on the way to his home in Humboldt Park.

¶ 7 According to defendant, at that same time, "Sergeant Dani Helen McMasters who used to work at the 14<sup>th</sup> District, saw who I was, her eyes lit up like she won the lottery. She stated to Officer Papke under her breath that we're hooking this mother f\*\*\*\*\*r up, okay." With that, defendant was placed in handcuffs and his vehicle was "ransacked." The vehicle was a former

Chicago police car with all of its emergency equipment left in the car. "At no time was this equipment ever activated." It was not the only police vehicle he owned; he would buy multiple vehicles, fix them up, and resell them. He used that particular vehicle "in necessity to render aid to my mother who had car problems with a flat tire in the Austin community" on the night in question. Defendant stated that he "did what I did for the safety and security reasons to render aid to my mother, okay." He was stopped on his way home from assisting her. At 2 a.m., the police went to the residence with a "phony consent to search form" that he never signed. The radios that formerly belonged to the police department were under the seat of his vehicle and he did not know they were in the car. However, he had purchased the police scanners and probably owned between 20 and 25 scanners. Defendant stated that he used "these radios for the purpose of transporting and moving vehicles around." Defendant admitted he was driving the vehicle and knew that his driver's license was revoked.

¶ 8 Officer Papke was called by the defense and viewed photographs of the intersection of Thomas and Leclaire. He testified the intersection is a turnaround or a turn circle; it would not prevent someone from traveling through the intersection at a high rate of speed. Photographs taken by defendant, showing the traffic circle at Thomas and Leclaire and also showing speed humps, were admitted in evidence.

¶ 9 Following a thorough review of the evidence, the court found defendant guilty of driving on a revoked license, driving an uninsured vehicle, and failure to have a valid state license plate sticker. Based on photographic and testimonial evidence, the court found there was no stop sign at the intersection of Thomas and Leclaire, but the court found defendant did fail to stop at a subsequent stop sign. The court found that defendant traveled above the speed limit, that the oscillating lights and police scanners in defendant's vehicle were in use, and that the police officers following him believed he was a police officer and attempted to assist him in his duties.

The court denied defendant's motion to quash arrest and suppress evidence and concluded that defendant's use of a car appearing to be a police vehicle, with its oscillating lights and police scanners activated, in order to evade traffic laws, was sufficient to establish defendant's guilt of false personation of a public officer beyond a reasonable doubt. The court sentenced defendant to concurrent jail terms of 30 days for false personation and driving on a revoked license and fined him \$515 for driving without insurance.

¶ 10 On appeal, defendant contends the evidence that emergency lights were activated atop the vehicle he was driving was insufficient to prove him guilty of false personation of a public officer where he never verbally represented to anyone that he was a police officer.

¶ 11 In reviewing a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Lee*, 376 Ill. App. 3d 951, 954 (2007). In a bench trial, the trial judge has the responsibility to determine the credibility of the witnesses, weigh the evidence and draw reasonable inferences therefrom, and resolve any conflicts. *People v. Little*, 322 Ill. App. 3d 607, 618 (2001). Such determinations are granted substantial deference on review. *Id.* This standard of review does not allow a reviewing court to substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009).

¶ 12 Defendant challenges the applicability of this standard, contending that the appropriate standard is *de novo* review. Defendant claims that, because defendant does not challenge the testimony of Officer Papke on review, therefore, the facts are uncontested and his claim "does not entail any assessment of the credibility of witnesses." We reject defendant's argument out of hand. Defendant testified in his own behalf. The record is replete with instances where the

testimony of a State witness and that of defendant conflicted, including such critical facts as whether the oscillating lights or the police scanners in defendant's vehicle were activated or whether he had been speeding before the police detained him, or whether the scanners were in open view on the seat next to defendant. In ruling on the evidence, the court noted the conflicts in the testimony, and the court's factual determinations formed the basis of its findings of guilt or innocence. Where witness credibility at trial is an issue, it is not our function to resolve any conflict or inconsistency in the testimony where the trial court was in a superior position to do so. *People v. Jordan*, 218 Ill. 2d 255, 269 (2006).

¶ 13 Defendant was charged with false personation of a public officer pursuant to section 32-5(b) of the Criminal Code of 1961 (Code) (720 ILCS 5/32-5(b) (West 2007)). On the date of the offense, September 21, 2007, that provision stated: "(b) A person who falsely represents himself or herself to be a public officer or a public employee or an official or employee of the federal government commits a Class B misdemeanor."

¶ 14 The evidence adduced at defendant's bench trial supported the trial court's finding that defendant was guilty of false personation of a public officer. On the date and time in question, defendant was driving a former Chicago Police Department (CPD) police car that was still equipped with its emergency lights and he had activated those emergency lights. Defendant contends that the fact the oscillating lights on his vehicle were activated does not show that he represented himself as an officer to anyone, but he cites no authority in support of this claim. On the contrary, given the totality of the circumstances, we find it reasonable for the trial court to have concluded that any onlooker viewing a speeding vehicle with emergency lights activated could have believed the person driving the vehicle was a public officer engaged in his official duties. Moreover, defendant was observed driving a distance of several city blocks at speeds in excess of the speed limit and driving through at least one stop sign without stopping.

¶ 15 The judge as trier of fact need not disregard the inferences that flow normally from this evidence. *People v. Raymond*, 404 Ill. App. 3d 1028, 1041 (2010). The reasonable inference issuing from the evidence here was that defendant was falsely representing himself to be a public officer who was driving a government vehicle in a manner suggesting he was acting in the performance of his public duties. In fact, the three *bona fide* police officers who observed defendant driving his vehicle with the lights activated were convinced that he was a fellow police officer. The three officers believed that defendant's vehicle, a 1996 Ford Crown Victoria, was an older police car being used officially as a CPD unmarked tactical unit vehicle. They concluded defendant was engaging in law enforcement activity and that he might need their backup assistance. It was not until after defendant had stopped his vehicle and the three police officers saw that his vehicle did not bear municipal "M" license plates that they doubted he was an officer. Their subsequent computer check revealed the plates did not match defendant's vehicle and confirmed defendant's imposture.

¶ 16 In concluding the evidence was sufficient to support the charge of false personation of a public officer, the trial court considered the totality of the evidence, including defendant's activation of the emergency lights, his excessive speed, and his passing at least one stop sign without stopping. The evidence also revealed that police radios on the passenger seat next to defendant were transmitting over the 15<sup>th</sup> and 25<sup>th</sup> police district radio frequencies, and that later examination proved that every CPD radio band was set on each of defendant's police radios. The court reasonably concluded that the purpose of the scanners was to monitor police activity in his location in order to avoid the real police.

¶ 17 Defendant notes there was no testimony that he made an oral representation to anyone that he was a police officer and contends that he was not proven guilty beyond a reasonable doubt because the evidence failed to show that he "represented himself to be a police officer to

any specific person." Defendant refers us to *People v. Rinehart*, 81 Ill. App. 2d 125 (1<sup>st</sup> Dist, 1967), where the evidence indicated the defendant was a watchman who was wearing a blue uniform with a shoulder patch at the time of the incident in question. A State witness testified he thought defendant was a police officer writing a traffic citation because he saw defendant holding a clipboard while standing next to his vehicle which was equipped with Mars lights, and he was talking to someone on a motorcycle. Noting, *inter alia*, that there was no testimony the defendant had made any oral representation that he was an officer, this court concluded that the evidence was insufficient to sustain the defendant's conviction of falsely representing himself to be a public officer.

¶ 18 *Rinehart* is distinguishable. The totality of facts in that case, including the lack of an oral representation by the defendant that he was an officer, demonstrated that the eyewitness had no reasonable grounds for believing the defendant was an officer issuing a traffic citation to a motorcyclist. The witness did not know who the motorcyclist was or why he had stopped his motorcycle or what was being said between the defendant and the motorcyclist. In contrast, the combination of several facts in the instant case relating to the appearance of defendant's vehicle, the activation of its emergency lights, the presence in open view in the vehicle of activated police scanners transmitting on local police district frequencies, and the manner in which defendant drove the vehicle demonstrated that he was falsely representing himself to be a public officer.

¶ 19 Moreover, section 32-5(b) does not require that, to establish a violation, the State must show that the accused made an oral representation that he was a public officer. We will not depart from the plain meaning of a statute by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent. *Petersen v. Wallach*, 198 Ill. 2d 439, 446 (2002).

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¶ 20 After viewing the evidence in the light most favorable to the State, we conclude that any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. Accordingly, we affirm the judgment of the trial court.

¶ 21 Affirmed.