

2011 IL App (2d) 100302-U  
No. 2-10-0302  
Order filed September 12, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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|                         |   |                               |
|-------------------------|---|-------------------------------|
| THE PEOPLE OF THE STATE | ) | Appeal from the Circuit Court |
| OF ILLINOIS,            | ) | of De Kalb County.            |
|                         | ) |                               |
| Plaintiff-Appellee,     | ) |                               |
|                         | ) |                               |
| v.                      | ) | No. 08-CM-157                 |
|                         | ) |                               |
| FLOYD J. CZAJKA,        | ) | Honorable                     |
|                         | ) | Melissa S. Barnhart,          |
| Defendant-Appellant.    | ) | Judge, Presiding.             |

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JUSTICE BURKE delivered the judgment of the court.  
Presiding Justice Jorgensen and Justice Birkett concurred in the judgment.

**ORDER**

*Held:* Where there is no evidence that defendant knew the police were attempting to serve a warrant for the arrest of defendant's girlfriend, who lived with defendant, the State failed to prove defendant guilty of knowingly obstructing a peace officer of an authorized act beyond a reasonable doubt, and the conviction for obstruction must be reversed; where defense counsel was ineffective for failing to move to suppress the knife based on the officer's lack of probable cause to arrest defendant, which led directly to the discovery of the weapon, the evidence must be suppressed, and the conviction of unlawful use of weapons also must be reversed.

¶ 1 Following a jury trial, defendant, Floyd J. Czajka, was found guilty of obstructing a peace officer and of unlawful use of weapons. The trial court sentenced defendant to 18 months'

conditional discharge on the obstruction count to be served with 18 months' court supervision on the weapons count. In addition, the trial court imposed 100 hours of community service and \$200 in costs and fines.

¶ 2 On appeal, defendant contends that (1) the State failed to prove him guilty of obstructing a peace officer beyond a reasonable doubt as (a) neither refusing to answer the door nor refusing to tell the officers the location of Thompson were physical acts, which are required to constitute obstruction and (b) he did not knowingly resist or obstruct because the State did not present evidence that he knew the police were there to arrest Thompson; (2) alternatively, the trial court improperly instructed the jury as to the offense of obstructing; and (3) his trial counsel provided ineffective assistance of counsel for failing to move to suppress the knife based on the officer's lack of probable cause to arrest defendant, which led directly to the discovery of the weapon. We find the State's failure to present evidence that defendant had knowledge of the warrants for Thompson's arrest is dispositive of the first issue, requiring reversal of his conviction for obstruction. We further find that defendant's counsel was ineffective for failing to move to suppress the knife based on the officer's lack of probable cause to arrest defendant and search him incident to that arrest, requiring reversal of his conviction for unlawful use of weapons.

¶ 3

#### BACKGROUND

¶ 4 On August 1, 2008, defendant was charged by complaint with the offense of obstructing a peace officer (720 ILCS 5/31-1 (West 2010)), and the offense of unlawful use of weapons (720 ILCS 5/24-(a)(1) (West 2010)). The complaint alleged that defendant knowingly obstructed the performance of the police of an authorized act within their official capacity, being the arrest of Deborah Thompson, knowing the police to be peace officers engaged in the execution of their

official duties, in that defendant refused to answer the door after Thompson was told to stop by police and entered the residence and then refused to tell the police where Thompson was, knowing Thompson to be located behind the shower.

¶ 5 Defense counsel filed a written motion to quash arrest, suppress evidence, and suppress statements. In the motion, counsel argued that police officers entered defendant's residence without a search warrant or his consent, that defendant was not observed in the commission of a crime at the time of the illegal entry into defendant's residence, and the fruits of this illegal search should be suppressed. Counsel requested that any physical evidence discovered directly and indirectly as a result of the illegal entry and search be suppressed. At the hearing on the motion, defense counsel argued that the police violated defendant's fourth amendment rights by entering his residence without a warrant. The trial court denied the motion on the basis that Thompson was wanted on two arrest warrants and "the un rebutted testimony is that Deborah Thompson lived in the apartment."

¶ 6 At trial, several officers from the Genoa police department testified for the State. At 12:57 p.m. on July 23, 2008, Officer Keri London was investigating an incident at 105 North Locust Street in Genoa, Illinois, implicating Thompson and eventually leading London to defendant's residence at 145 North Stott Street in Genoa. Officer Tim Hoffstead arrived to assist London with her investigation.

¶ 7 London and Hoffstead observed Thompson sitting at a table in the backyard. London called out to Thompson as she walked toward her, but Thompson ignored London and started walking to the house. As Thompson stepped inside the house, Thompson yelled something and locked the door. London, who was shortly behind her, tried opening the door, but it was locked. London and Hoffstead knocked a number of times on the door. After knocking for about 10 minutes, the officers

called Patrick Solar, the chief of police, and informed him of the situation. Sometime prior to this, London and Hoffstead had learned through dispatch that Thompson resided at the Stott Street address and that she was wanted on two arrest warrants. One of the warrants was admitted into evidence without an objection.

¶ 8 Hoffstead intermittently “banged” on both the back and front doors and yelled into the residence, “Floyd, you need to open the door,” but he did not receive any response. Although the windows were open, neither officer heard any noise from inside the house. London and Hoffstead talked with other tenants in the building. The building was described as a two-story, single-family home that had been converted into at least three separate apartments. Defendant’s residence was located on the first floor.

¶ 9 Chief Solar arrived about 20 minutes later. Solar also yelled and banged on the doors with his fist and a flashlight for about 10 minutes. Solar received no response and concluded that it was necessary to force entry into defendant’s home to apprehend Thompson. Hoffstead found an unlocked window, opened it, and announced three times: “Police department. Floyd, come to the door.” After Hoffstead climbed through the window and announced his presence again, he opened the front door for Solar and London. Solar announced, “Police department. Come out. We know you’re in here.”

¶ 10 They walked through the house and Solar found defendant in the bathroom shower, wet and naked. Solar asked defendant where Thompson was. Defendant replied that he did not know what Solar was taking about.

¶ 11 The bathroom was described as a large, multiple purpose room. It contained a linen closet, washer and dryer, shower, sink, and toilet. The shower was enclosed by two curtains and a space

was located between the portion of the wall next to the appliances and the shower wall, which contained a pile of clothes. When Solar moved some of the clothes, he discovered Thompson and ordered her to “get out of there.” Thompson had to grab the shower stall to climb over either the washer or the dryer to exit the space.

¶ 12 After the police took Thompson into custody, defendant was ordered to dress. Once defendant dressed, Solar placed him under arrest for obstructing a peace officer. During a pat-down, Hoffstead recovered a switchblade in defendant’s pocket.

¶ 13 Defendant testified that he was diagnosed with tinnitus, which causes him to hear ringing in his ears and makes it difficult to hear. Earlier in the day, defendant had a conflict with his son. Because he had been hit by several rocks, was sore, and was bleeding, defendant took a shower around 12:30 or 1 p.m. Defendant had been in the shower for at least 30 minutes, did not hear the officers knocking, and did not know how long they were outside his apartment. Hoffstead initially told defendant that the officers were present to ask about defendant’s son. Defendant stated that the officers repeatedly asked him where his girlfriend was, but they did not address her by name. Defendant told them that he thought she was outside but did not know for sure because he was taking a shower. He did not see the officers find Thompson in the bathroom. Both Hoffstead and Solar ordered defendant to dress. Defendant was looking for something to wear when one of the officers pointed to some pants and ordered him to put those on.

¶ 14 Defendant did not know that warrants had been issued for Thompson’s arrest before the police found Thompson. Defendant stated that the police only wondered where his girlfriend was located. On cross-examination, defendant stated that he did find out about the warrants for Thompson’s arrest after the police found Thompson.

¶ 15 During closing argument, the State maintained that defendant was guilty of obstructing a peace officer for refusing to open his door when the police were knocking and for refusing to tell the police where Thompson was located after they found defendant in the shower. The State further maintained that defendant lied when defendant stated that he did not know where Thompson was; it was “just not believable that he didn’t know that she was back there \*\*\* that he didn’t hear the pounding on the door and that he was in a shower for an entire half an hour to 45 minutes while they were pounding on the door.” The jury found defendant guilty of both obstructing a peace officer and unlawful use of weapons. Following sentencing and the denial of his motion to reconsider, defendant timely appeals.

¶ 16

#### ANALYSIS

¶ 17

##### I. Obstructing a Police Officer

¶ 18 Defendant first contends that (1) the State failed to prove him guilty of obstructing a peace officer beyond a reasonable doubt as (a) neither refusing to answer the door nor refusing to tell the officers the location of Thompson were physical acts, which are required to constitute obstruction and (b) he did not knowingly resist or obstruct because the State did not present evidence that he knew the police were there to arrest Thompson. Notably, the State does not respond to the argument of whether defendant knowingly resisted or obstructed a peace officer based on the State’s failure to present evidence that the police informed defendant of the reason for their presence. Instead, the State argues that the refusal to open the door or answer police questions can be considered obstructing, and the burden of proof was met based on circumstantial evidence.

¶ 19 Because the issue involves a challenge to the sufficiency of the evidence, we set forth the applicable standard of review. When there is a reasonable doubt challenge, we determine whether,

after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). A conviction will not be set aside on grounds of insufficient evidence unless the proof is so unreasonable, improbable, or unsatisfactory as to leave a reasonable doubt as to the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 20 The statute in question provides: “A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer \*\*\* of any authorized act within his official capacity commits a Class A misdemeanor.” 720 ILCS 5/31-1(a) (West 2010). “Resistance” and “obstruction” requires some physical act that imposes an obstacle which may impede, hinder, interrupt, prevent, or delay the performance of the officer's duties, such as by going limp, forcefully resisting arrest, or physically aiding a third party to avoid arrest. *People v. Raby*, 40 Ill. 2d 392, 399 (1968). Mere refusal to answer a police officer, in the absence of a physical act, may be deemed tantamount to argument, which is not a violation of the statute. See *People v. Weathington*, 82 Ill. 2d 183, 187 (1980).

¶ 21 In *People v. Hilgenberg*, 223 Ill. App. 3d 286 (1991), we held that the defendants' inaction in failing to open the door to the building at the officer's request could not be deemed an act of “physical resistance,” such as would permit the prosecution of the defendants for “resisting” or “obstructing” a peace officer. *Hilgenberg*, 223 Ill. App. 3d at 290. We observed that the inaction of the occupants of a house or building, without more, had no legal significance. *Hilgenberg*, 223 Ill. App. 3d at 290. We further noted that:

“[A] failure to respond to an officer's request to open a door or to permit entry to the premises only has legal significance if the request was authorized within his official capacity

and the response of the defendant actually *impeded* an act the officer was authorized to perform. If the officer were there merely selling magazines or asking for donations, no one would rationally argue that the failure to answer the door was an act of obstruction cognizable as a criminal offense.” (Emphasis in original.) *Hilgenberg*, 223 Ill. App. 3d at 290.

¶ 22 Of importance was the direct implication of the fourth amendment right to be free from unwarranted searches. *Hilgenberg*, 223 Ill. App. 3d at 290. From the face of the complaint, it was clear to us that the officer was merely investigating a non-felony complaint, as there were no allegations with respect to the officer’s possession of a warrant of any kind or probable cause coupled with exigent circumstances. *Hilgenberg*, 223 Ill. App. 3d at 290-91. We held that alleging “an official police investigation” does not constitute an “ ‘authorized’ ” act under the statute (now 720 ILCS 5/31-1(a) (West 2010)), requiring the defendants to open the door or permit the entry of the officer onto the premises and that, absent specific factual allegations that the officer was acting on the basis of a warrant, consent, or probable cause to arrest, coupled with exigent circumstances, the complaint did not state an offense. *Hilgenberg*, 223 Ill. App. 3d at 294.

¶ 23 In *People v. Cope*, 299 Ill. App. 3d 184, 189 (1998), relying in part on *Hilgenberg*, we found that the defendant could not be held to have obstructed the police by failing to open the door in response to their demands to turn over a runaway because the police did not have a warrant. *Cope*, 299 Ill. App. 3d at 190. We stated:

“ ‘When \*\*\* the officer demands entry but presents no warrant, there is a presumption that the officer has no right to enter, because it is only in certain carefully defined circumstances that lack of a warrant is excused. [Citation.] An occupant can act on

that presumption and refuse admission. He need not try to ascertain whether, in a particular case, the absence of a warrant is excused. He is not required to surrender his Fourth Amendment protection on the say so of the officer. The Amendment gives him a constitutional right to refuse to consent to entry and search. His asserting it cannot be a crime [citation]. Nor can it be evidence of a crime. \*\*\* One cannot be penalized for passively asserting this right, regardless of one's motivation.'” *Cope*, 299 Ill. App. 3d at 190 (citing *United States v. Prescott*, 581 F. 2d 1343, 1350-51 (9<sup>th</sup> Cir. 1978)).

¶ 24 Defendant argues that the State cannot prove that he “knowingly” obstructed the police of an “authorized act” because the State did not present evidence that he knew about the warrant for Thompson’s arrest. Without this evidence, it is as if there were no warrant, and he was not required under the statute to consent to entry or to answer questions of Thompson’s whereabouts.

¶ 25 “The function of the requirement to announce authority and purpose is to notify the person inside of the presence of police and to afford the person an opportunity to respond, so that violence can be averted and privacy protected.” *People v. Wolgemuth*, 69 Ill. 2d 154, 166 (1977). In this case, even though the police may have had a valid purpose in requesting defendant to open the door, if there is no evidence that he is actually aware or the evidence supports a reasonable inference that he is aware of that purpose, he cannot be guilty of knowingly obstructing an authorized act. Defendant would still be operating under the presumption that the police had no right to enter and defendant had a right to refuse entry. See *Kentucky v. King*, \_\_\_ U.S. \_\_\_, \_\_\_, 131 S. Ct. 1849, 1862, 179 L. Ed. 2d 865, \_\_\_ (2011); *Cope*, 299 Ill. App. 3d at 190-91.

¶ 26 The same analysis applies to the police questioning defendant in his bathroom. Even though the police may have had a legitimate purpose in entering the apartment to search for Thompson to

arrest her, the record is devoid of any reference to the police indicating to defendant why they were looking for Thompson. Even if defendant gave misleading information to the police, he cannot be guilty of knowingly obstructing a peace officer under section 31-1(a) unless he was aware that his actions were obstructing an authorized act, *i.e.*, the service of the warrant. Although the police may have been authorized to enter on the basis of the arrest warrants for Thompson, it does not excuse their failure to inform defendant of their authorized act. Accordingly, we find the State failed to present evidence to prove that defendant knowingly obstructed an authorized act beyond a reasonable doubt and his conviction for obstruction must be reversed. Based on the preceding, we need not address the alternative argument that the trial court improperly instructed the jury as to the offense of obstructing.

¶ 27

## II. Ineffective Assistance of Counsel

¶ 28 We last address defendant's contention that his trial counsel was ineffective for failing to move to suppress the knife based on the police officer's lack of probable cause to arrest him and then search him incident to that arrest. To prevail on a claim of ineffective assistance, the defendant must show that (1) counsel's performance fell below an objective standard of reasonableness and (2) the deficient performance so prejudiced the defense as to deny defendant a fair trial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *People v. Albanese*, 104 Ill. 2d 504, 525-26 (1984). Because there is no factual dispute as to counsel's representation and the trial court made no findings, the question of whether her representation was effective is reviewed *de novo*. See *People v. Nowicki*, 385 Ill. App. 3d 53, 81 (2008).

¶ 29 Generally, the decision whether to file a motion to quash is traditionally viewed as trial strategy. *People v. Little*, 322 Ill. App. 3d 607, 611 (2001). A failure to file a motion to quash arrest

and suppress evidence is not *per se* incompetence of counsel, but each case must be judged upon the circumstances therein. Courts have found that a failure to file such a motion can be ineffective assistance of counsel. See, e.g., *Little*, 322 Ill. App. 3d at 613-14; *People v. Moore*, 307 Ill. App. 3d 107, 112 (1999). In this circumstance, counsel is ineffective “when the pre-trial motion which counsel neglected to present was defendant’s strongest defense or patently meritorious.” *People v. McPhee*, 256 Ill. App. 3d 102, 107 (1993). To demonstrate ineffective assistance of counsel, “defendant must show, first, a reasonable probability that the motion would be granted and, second, that the outcome of the trial would have been different if the motion had been granted.” *Little*, 322 Ill. App. 3d at 611. Even if the motion to suppress would have been denied by the trial court, prejudice can be established due to the failure of trial counsel to preserve a meritorious issue for appeal. See *People v. Brinson*, 80 Ill. App. 3d 388, 393-94 (1980).

¶ 30 Under the circumstances here, the police lacked probable cause to arrest defendant for obstruction, as there was no evidence to establish that defendant knew or reasonably should have known of the reason for their presence. Subjective belief that the law has been broken, when no violation actually occurred, is not objectively reasonable. See *People v. Haywood*, 407 Ill. App. 3d 540, 547-48 (2011) (a police officer's mistake of law cannot support probable cause to conduct a stop). Although counsel filed a motion to quash challenging the police officers’ entry into the apartment, there is a reasonable probability that, had counsel argued in the motion that defendant’s subsequent arrest for obstruction was not based on probable cause and was therefore unconstitutional, the motion would have been granted.

¶ 31 Under the “fruit of poisonous tree” doctrine in *Wong Sun v. United States*, 371 U.S. 471, 484–86 (1963), evidence obtained by virtue of an illegal arrest may trigger the application of the

exclusionary rule, making such evidence inadmissible against a defendant. However, a conclusion that a defendant was illegally detained is not the only consideration in determining whether evidence obtained subsequent to the detention will be admissible. *People v. Johnson*, 237 Ill. 2d 81, 92 (2010) (citing *People v. Lovejoy*, 235 Ill. 2d 97, 130 (2009)). In *Lovejoy*, where the defendant sought the exclusion of certain statements, our supreme court explained:

“The relevant inquiry is whether the statements bear a sufficiently close relationship to the underlying illegality. *New York v. Harris*, 495 U.S. 14 (1990). Generally, courts resolve this question by considering whether the evidence was obtained ‘by means sufficiently distinguishable to be purged of the primary taint’ of illegality. *Wong Sun*, 371 U.S. at 487–88. However, this attenuation analysis is only appropriate where the evidence sought to be suppressed was actually obtained as a result of some illegal government activity. *Harris*, 495 U.S. 14, 19 (1990); *People v. McCauley*, 163 Ill. 2d 414, 448 (1994) (‘[w]hen police conduct results in a violation of constitutional rights, evidence obtained as a result of that violation, and only evidence so obtained, is to be suppressed’); *People v. Gervasi*, 89 Ill. 2d 522, 528 (1982) (‘[t]he basic assumption underlying the “fruit of the poisonous tree” doctrine is that the challenged evidence is *derived* from some violation of a statutory or constitutional right’ (emphasis in original)).” *Lovejoy*, 235 Ill. 2d at 130.

¶ 32 In this case, the discovery of the switchblade knife followed and flowed from the initial, unlawful arrest of defendant. Defendant was arrested for obstruction of a peace officer, ordered to dress, and immediately taken outside his residence to be searched. During this search, the officer found the switchblade knife in defendant’s pocket. We do not discern a break in the chain or any

intervening circumstances sufficient to attenuate the recovery of this evidence from the initial illegality of the arrest.

¶ 33 The motion to quash was based on the officers' entry and search of defendant's residence, but the subsequent arrest was not challenged. While the ruling on the motion for a directed verdict indicates that the trial court erroneously concluded that defendant's actions constituted obstructing a police officer, defendant was still prejudiced, as the failure to file the motion challenging the subsequent arrest forfeited this issue for review. *People v. Brinson*, 80 Ill. App. 3d 388, 393-94 (1980). Moreover, the outcome of defendant's trial would have been different because, without the knife, the State would have had no evidence to prove the unlawful use of weapons charge beyond a reasonable doubt. Accordingly, we conclude that defendant's trial counsel was ineffective for failing to move to suppress the knife based on the officer's lack of probable cause to arrest defendant and then search him incident to that arrest, and defendant's conviction for unlawful use of weapons must be reversed.

¶ 34

#### CONCLUSION

¶ 35 Based on the preceding, we reverse the convictions of obstructing a peace officer and unlawful use of weapons.

¶ 36 Reversed.