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No. 3--09--0999

Order filed June 7, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 12th Judicial Circuit,
)	Will County, Illinois,
Plaintiff-Appellee,)	
)	
v.)	No. 08--CF--1007
)	
MICHAEL P. MAROTTA,)	Honorable
)	Carla Alessio-Policandriotes,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Carter dissented.
Justice McDade concurred in the judgment.

ORDER

Held: The State failed to prove beyond a reasonable doubt that the defendant knowingly and falsely represented himself as a peace officer.

On May 4, 2008, the defendant, Michael P. Marotta, was stopped by an Illinois State Trooper on suspicion of driving under the influence (DUI). The defendant purportedly represented to the officer that he was a Village of Stickney police officer. The officer arrested the defendant when she could not verify his

statement. After a bench trial, the defendant was found guilty of false personation of a peace officer (720 ILCS 5/32--5.1 (West 2008)). The defendant appeals, arguing that the State failed to prove each element of this offense beyond a reasonable doubt. We reverse.

FACTS

The defendant was charged with false personation of a peace officer after he was stopped for suspicion of DUI on the night of May 4, 2008. The defendant later pled guilty to the DUI charge. He pled not guilty to the false personation of a peace officer charge, and the case was set for a bench trial.

Prior to trial, the State provided the defendant with a list of witnesses and a summary of their possible testimony. Of these witnesses, the State intended to call the Illinois State Trooper who arrested the defendant to testify. Therefore, the State included a copy of her police report with its discovery.

At trial, the officer testified that the defendant produced his driver's license and handed her his wallet, which contained a badge that denoted he was a lieutenant in the Illinois Police Bureau (IPB). Additionally, she testified that the defendant produced three other forms of identification verifying that he was an IPB officer. The defendant stated that he was a sworn officer. However, the defendant had difficulty telling her where the IPB was located. It was then that the defendant brought up

the Stickney police department and purportedly said that he "work[ed] for the Stickney Police Department" and agreed that he was a Stickney police officer. The officer further stated that she contacted an IPB commander who informed her that the defendant was not a police officer. The officer did not testify that the defendant was mumbling or difficult to understand until she was cross-examined by defense counsel.

The IPB commander was called to testify next. The commander stated that the IPB is an independent auxiliary police department that assists full-time police departments with crowd control and disaster relief. Additionally, IPB officers are "sworn to the department; and then *** become sworn to the full-time police department when it becomes necessary." The commander admitted that IPB officers were not sworn police officers, but they are sworn to the agency. He testified that the defendant was a sworn member of the IPB on the date of the arrest. Additionally, the commander stated the defendant "was a member of the [Stickney police department] auxiliary *** not of the department itself" on the night of his arrest.

At the close of the State's case, the defendant moved for an acquittal. In support of this motion, defense counsel read from the officer's police report, which counsel alleged was "substantially similar to what the officer testified to." The State did not object. Defense counsel argued that the officer

noted that the defendant was hard to understand and mumbled. The defendant allegedly told the officer "I am a Lieutenant with the [IPB]." When the officer asked the defendant where he was a police officer at, he purportedly mumbled something about the Stickney police department.

After the court denied the defendant's motion, the defendant testified that he joined the IPB in the mid-1980s and began his working relationship with the Village of Stickney in 1998. The defendant stated that on the day of his arrest, he was intoxicated and had difficulty explaining to the officer his position with the Stickney police department. The defendant testified that he told the officer when she inquired about his badge "I am an officer of the Illinois Police Bureau[.]" When the officer inquired further, the defendant explained that he worked for the Village of Stickney, but he denied ever telling the officer that he was a Stickney police officer.

After reviewing the evidence, the trial court found the defendant guilty of false personation of a peace officer. The defendant was later sentenced to 30 months probation. The defendant appeals.

ANALYSIS

The defendant raises two issues on appeal: first, whether there was sufficient evidence to convict him beyond a reasonable doubt of false personation of a peace officer; and second,

whether his conviction can be sustained when the State did not comply with its discovery obligations. We find that the evidence was insufficient to convict the defendant beyond a reasonable doubt and therefore do not address the defendant's second issue.

To convict an individual of false personation of a peace officer, the State must prove beyond a reasonable doubt that the individual "knowingly and falsely represent[ed] himself or herself to be a peace officer." 720 ILCS 5/32--5.1 (West 2008). A peace officer is "any person who by virtue of his office or public employment is vested by law with a duty to maintain public order." 720 ILCS 5/2--13 (West 2008).

When presented with a challenge to the sufficiency of the evidence, it is not our function to retry the defendant, but to determine, after viewing the evidence in the light most favorable to the prosecution, if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237 (1985). We will not reverse a criminal conviction unless "the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Reyes*, 328 Ill. App. 3d 918, 927 (2002).

The defendant contends that the evidence was insufficient to sustain a conviction. He argues that he never represented that he was a Stickney police officer, and that instead the officer

was confused by his unintelligible and inebriated mumbling. In support, the defendant cites the officer's testimony that the defendant told her that he was an officer of the IPB. The defendant contends that at most there was little evidence that he stated that he was a Stickney police officer, and such a mere modicum of evidence is insufficient to sustain a conviction beyond a reasonable doubt. See *Jackson v. Virginia*, 443 U.S. 307 (1979).

We agree. Based on the record, there is no evidence that the defendant told the officer that he was anything other than a member of the Illinois Police Bureau (IPB). The officer's testimony established that the defendant told her that he was an officer of the IPB at the time of the incident. Further, testimony from the IPB commander corroborated the defendant's statement that he had worked in an auxiliary capacity to the Stickney police department. In addition, the defendant provided the officer with three forms of identification and a badge indicating he was an IPB officer. The only other statements made by the defendant were purportedly mumbled and near totally unintelligible due to the defendant's intoxication.

To that end, we find that the State failed to meet its burden of showing that the defendant "knowingly and falsely represent[ed] himself or herself to be a peace officer." See 720 ILCS 5/32--5.1 (West 2008).

CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Will County is reversed.

Reversed.

CARTER, P.J., dissenting:

I respectfully dissent from the majority's order in the present case regarding the sufficiency of the evidence. The appropriate standard of review for that issue is the standard set forth in *People v. Collins*, 106 Ill. 2d 237 (1985), and the cases that have followed *Collins*. Pursuant to the *Collins* standard, a reviewing court faced with a challenge to the sufficiency of the evidence must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *Collins*, 106 Ill. 2d at 261; *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). This same standard of review is applied by the reviewing court regardless of whether the evidence is direct or circumstantial or whether defendant received a bench or a jury trial, and circumstantial evidence meeting this standard is sufficient to sustain a criminal conviction. *Jackson*, 232 Ill. 2d at 281; *People v. Kotlarz*, 193 Ill. 2d 272, 298 (2000). When applying the *Collins* standard, a reviewing court must allow all reasonable inferences from the

record in favor of the prosecution. *People v. Davison*, 233 Ill. 2d 30, 43 (2009).

In my opinion, the majority's ruling in the present case is not consistent with the *Collins* standard. Applying *Collins*, I would affirm defendant's conviction. Defendant also raised a second issue on appeal—that he is entitled to a new trial because of a discovery violation. As the majority has not addressed that issue in its order, I take no position on that issue in this dissent.

For the reason stated, I respectfully dissent from the majority's order in the present case. I would affirm defendant's conviction.