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2013 IL App (3d) 110123-U

Order filed February 7, 2013

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-11-0123
v.	)	Circuit No. 09-CM-1473
	)	
DAVID L. PETERSON,	)	Honorable
	)	Timothy M. Lucas,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* Evidence was insufficient to convict defendant of resisting a peace officer where defendant walked away from the officer during a consensual encounter.

¶ 2 A jury convicted defendant of resisting a peace officer in violation of 720 ILCS 5/31-1(a) (West 2008), and the court sentenced defendant to serve 10 days in jail. Defendant appeals his conviction on the ground that the evidence was insufficient to prove him guilty beyond a reasonable doubt. We reverse.

¶ 3 FACTS

¶ 4 Defendant was charged with resisting a peace officer (720 ILCS 5/31-1(a) (West 2008)) and aggravated assault (720 ILCS 5/12-2(a)(6) (West 2008)) based on an incident near his home on June 8, 2009. On that date, Peoria County sheriff's deputy Adam Kenny responded to a call from a young lady indicating someone knocked on her front door while she and another juvenile were home alone. The young caller explained that when she opened the front door, there was no one at the door, but the family's security cameras were unplugged.

¶ 5 When Kenny arrived at the home to investigate the call, he observed a man across the street. This man, later identified as defendant, asked Kenny what he was doing in the neighborhood. Kenny told him that he was there to speak with residents and approached the caller's house.

¶ 6 Kenny spoke with the caller, a female juvenile. After speaking with her, Kenny observed two outdoor security cameras were wired to the inside security monitor with a cord that ran from the outdoor cameras into the bedroom window. This arrangement allowed someone standing outside the window to unplug the cord from outside the house. In response to the officer's question, the female juvenile told the officer that the only person the family had trouble with was a next-door neighbor, the defendant, because he objected to the positioning of one of the security cameras which was pointed toward defendant's backyard swimming pool.

¶ 7 Thereafter, Kenny went next door. He first spoke with defendant's wife, who called defendant on his cellular phone and asked him to return to the house. Defendant arrived a few minutes later and spoke to the officer outside defendant's home. When Kenny asked defendant if he knew the children who lived next door, defendant became "visibly angry," began flailing his

arms, and complained about harassment from the police and his neighbors. Kenny directed defendant to sit down on the sidewalk but defendant said "no" and walked a few steps away from the officer. Kenny followed, grabbing defendant's shoulder, which caused defendant to turn around and move towards Kenny. Kenny immediately backed up, deployed his taser, hitting defendant in the upper torso. After defendant fell to the ground, Kenny placed him under arrest.

¶ 8 The jury found defendant guilty of resisting a peace officer and not guilty of aggravated assault. Defendant was sentenced to 10 days in jail. Defendant appeals.

¶ 9 ANALYSIS

¶ 10 Defendant argues that the State failed to prove him guilty beyond a reasonable doubt of resisting a peace officer. 720 ILCS 5/31-1 (West 2008). On review of the sufficiency of the evidence, the standard is whether, 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. Wheeler*, 226 Ill. 2d 92 (2007). A person is guilty of resisting a police officer when he "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[.]" 720 ILCS 5/31-1(a) (West 2008).

¶ 11 The interaction between defendant and Kenny began as a purely consensual encounter because defendant voluntarily returned to his home to speak with the officer. Thereafter, the officer began questioning defendant during the ensuing conversation. See *Terry v. Ohio*, 392 U.S. 1 (1968)). While a *Terry* stop constitutes an "authorized act" for purposes of the resisting a peace officer statute (720 ILCS 5/31-1(a) (West 2008)), Kenny did not inform defendant he was the subject of a *Terry* stop or that defendant was not free to leave.

¶ 12 Under these circumstances, defendant had reason to believe he could refuse the request to sit down and could freely walk away from the officer, thereby ending the purely voluntary encounter. When defendant turned to walk away, Kenny did not address defendant or order him to stay. Rather, the officer initiated contact by grabbing defendant to physically prevent him from leaving when defendant stopped and turned around. By stopping and facing Kenny, defendant was not resisting the officer.

¶ 13 The fact that defendant was shouting and gesturing before he walked away from the officer does not support the conviction for resisting. See *People v. Long*, 316 Ill. App. 3d 919, 927 (2000) ("Merely arguing with a police officer–even using abusive language–does not constitute resisting a peace officer"). Therefore, we conclude the evidence, viewed in the light most favorable to the prosecution, does not support the guilty verdict in this case. Quietly walking away from an officer, thereby ending a consensual encounter initiated by a police officer, is not unlawful.

¶ 14 We reverse defendant's conviction and need not reach defendant's claim that the charging instrument was fatally inadequate.

¶ 15 CONCLUSION

¶ 16 The judgment of the circuit court of Peoria County is reversed.

¶ 17 Reversed.