2014 IL App (3d) 130328-U

Order filed November 10, 2014

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

RHONDA HAMBRICK,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois,
	)	
v.	)	
	)	
OFFICER THOMAS BANAS, OFFICER AARON BANDY, OFFICER ERIC BERNHARD, OFFICER TIM CONROY, OFFICER JEFFREY GERMAN, OFFICER TERRENCE GRUBER, OFFICER GREGORY HUMPHREY, OFFICER GREG KAZAK, OFFICER JAMES KILGORE, OFFICER MICHELLE MARTORELLI, OFFICER BRIAN PROCHASKA, and OFFICER JOHN WILSON,	)	Appeal No. 3-13-0328
	)	Circuit No. 10-L-0333
	)	
	)	
	)	
	)	
	)	
	)	
	)	Honorable Bobbie Petrungaro,
Defendants-Appellees.	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The trial court's finding that defendant-officers did not use excessive force when executing a search warrant was not against the manifest weight of the evidence.

¶ 2 Plaintiff, Rhonda Hambrick, filed a complaint against a number of Joliet police officers alleging they used excessive force during the execution of a search warrant which caused plaintiff to sustain injuries. After a bench trial, the court entered judgment in favor of defendants, Aaron Bandy, Terrence Gruber, Brian Prochaska, and Thomas Banas. On appeal, plaintiff argues the court's ruling was against the manifest weight of the evidence. We affirm.

¶ 3 BACKGROUND

¶ 4 On April 28, 2010, plaintiff filed a one-count complaint against defendants, 12 Joliet police officers, seeking more than $50,000 in damages. The complaint alleged defendants used excessive force during the execution of a search warrant when they rammed the door while plaintiff was behind it, causing injuries to plaintiff, in violation of section 1983 of the United States Code. 42 U.S.C. § 1983.

¶ 5 The matter proceeded to a three-day bench trial beginning on December 17, 2012. Prior to trial, plaintiff dismissed seven officers from the case, leaving officers Thomas Banas, Aaron Bandy, Terrance Gruber, Brian Prochaska, and Eric Bernhard[1] as defendants. The parties stipulated to the admission of plaintiff's medical bills and records.[2]

¶ 6 Plaintiff's husband, Troy Hambrick, testified he lived at a home located at 4 Morris Street. Approximately five months before the police executed the search warrant on September 23, 2009, Troy agreed to store marijuana plants as a favor for Clay Alan Doss, Jr. On September 23, 2009, Troy, plaintiff (Troy's wife), Troy's son Calvin, and Troy's grandson, began to watch a movie in the front room of the home. According to Troy, the front room had a large window with a view of the front yard. The blinds on the front window were open on September 23, 2009.

[1] On the third day of trial, plaintiff dismissed officer Bernhard as a defendant.

[2] Plaintiff's medical bills and records were admitted into evidence, but are not included in the record on appeal.

¶ 7 Troy stood up from the couch to get a drink of water from the kitchen. As he walked through the kitchen doorway, Troy observed two police officers, with masks on, moving near the back of the house. Troy turned around and noticed a line of police officers through the front window and stated, "Oh, sh***. The cops." From Troy's vantage point, he observed at least ten police officers outside. Troy heard three knocks on the door, and someone say, "Police. Open up." According to Troy, both the deadbolt and the doorknob lock on the front door were unlocked. In less than three seconds, plaintiff stood up, went "directly" to the door, and began opening the door when the door flew open, striking her head before moving her back three feet into a chair.

¶ 8 At that point, officers entered the home through the front and back doors. The officers placed Troy under arrest. Troy identified several photographs of the door and house taken two weeks after the execution of the search warrant.[3]

¶ 9 Plaintiff testified consistent with Troy's version of the events. Plaintiff stated she lived at 4 Morris Street with her husband, Troy, and her son, Calvin. On September 23, 2009, plaintiff, Troy, Calvin, and plaintiff's grandson were in the living room watching a movie. Troy stood up and walked toward the kitchen when he said, "Sh***. The police are here." Plaintiff heard three knocks on the door and someone say, "Police. Open up." Plaintiff used Calvin's knee as leverage to stand up from where she was seated on the floor and went to open the front door. She testified that she did not say anything to let the police know she was answering the door. Plaintiff believed it took her two seconds to get to the door and she thought the officers could see inside through the large window. Plaintiff put her hand on the doorknob and opened the door a

[3] Although these photographs were admitted into evidence, and discussed extensively by various witnesses, they are not included in the record on appeal.

couple of inches to where she could see daylight and two heads outside. The door hit plaintiff on her forehead, causing plaintiff to fly backward into a chair, and fall to the floor.

¶ 10 Plaintiff suffered two broken ribs, a punctured lung, and remained hospitalized for seven days, resulting in $27,556.01 in medical bills. After she returned home from the hospital, plaintiff did not observe any damage to the doorjamb.

¶ 11 Plaintiff's son, Calvin, testified the family sat down to watch a movie around 4 p.m. on September 23, 2009. Troy stood up to get a drink and said, "Sh***, cops are here," and Troy remained standing in the kitchen doorway. Calvin saw 8 to 10 officers through the large front window and believed he was visible to the officers as well. Calvin heard the police knock on the door. According to Calvin, plaintiff walked toward the front door, which took her two to three seconds. As plaintiff opened the door at least one inch, the door flew open and hit plaintiff in the head, knocking her backward. Calvin observed the black cylindrical ram come through the door.

¶ 12 During cross-examination, Calvin admitted he testified during his deposition that Troy sat back down after announcing the police were at the house. Calvin also admitted that, during his previous deposition testimony, he stated plaintiff had not opened the door before the police used the ram. However, Calvin explained to the court that his earlier deposition testimony was untruthful.

¶ 13 Joliet police officer Terrence Gruber testified he was a tactical officer who had been with the department for six years. Gruber explained that the execution of a search warrant was conducted using a stack formation, with officers working as the "pry," "ram," and "shield" at the front of the stack. Gruber explained the officers lined up away from windows and customarily would not position themselves directly in front of any windows. According to Gruber, the "pry" officer would knock and announce the officers' presence. Gruber testified that Sergeant

Cardwell was the "pry" officer and also the supervisor on scene who was responsible for determining whether the door was unlocked. Due to Gruber's location in the stack, he did not know if anyone checked to see if the door was unlocked.

¶ 14 Gruber made eye contact with a man inside the house as the "pry" officer knocked on the front door. Gruber saw the man inside stand up and begin walking toward the rear of the house. Gruber believed more than two or three seconds passed between when the police knocked and rammed the door. Gruber remembered his sergeant said "Hit the door." Gruber did not hear anyone inside announce they would be opening the door.

¶ 15 Joliet police officer Aaron[4] Bandy testified he had been with the department for eight and one-half years and worked as a tactical officer on September 23, 2009. Bandy testified he had rammed approximately 100 doors during his career. According to Bandy, the officers did not park their truck in front of the subject residence and the officers lined up away from the front door and windows for safety reasons. Bandy said the storm door was open. Bandy saw his sergeant knock on the front door. Although Bandy could not recall if his sergeant checked to see if the door was locked, it was standard procedure to check to see if the door was locked. According to Bandy, he believed it "highly impossible" Sergeant Cardwell would not have checked the door. Bandy stated if someone was trying to open the door from inside, he would not ram the door because there would be no need for forced entry.

¶ 16 Bandy heard an officer announce a man inside was going toward the back of the house. Bandy recalled a few officers announcing their presence had been "compromised" before Bandy's sergeant directed him to ram the door. According to Bandy, 10 seconds passed from the

[4] The transcript identifies officer Bandy's first name as "Ed" not "Aaron." However, the pleadings identify officer Bandy's first name as "Aaron."

time Sergeant Cardwell knocked on the door to the time Bandy followed the command to ram the door.

¶ 17 Bandy explained that the ram absorbed the force of the impact and the ram stopped where it hit the door and came back toward Bandy. Bandy also testified he aimed for the doorknob and did not raise the ram or force it through the doorway. If Bandy saw someone opening the door, he would have stepped out of the way so the "shield" could be the first officer to enter the home. Bandy stated that if an officer in the stack observed someone opening the door, the officer would have made that information known to the others. Bandy did not hear anyone inside the house announce they were opening the door.

¶ 18 Joliet police officer Brian Prochaska testified he had been with the police department since 2000. Prochaska was the "shield" during the raid at 4 Morris Street. Prochaska remembered the officers lined up at an angle away from the door and windows. Prochaska recalled one of the officers knocked on the door and an officer stated he saw someone inside the house stand up and head toward the back of the house. Prochaska could not recall how much time passed between the knock and the announcement before the ram was used. He believed it was more than three seconds and could have been as long as 15 seconds. Prochaska explained he watched the door for movement and to see if it was being opened so he could step in front of the officers with his shield to reduce any threat. Prochaska did not recall seeing the door being opened from the inside. If someone opened the door, that person would see the shield, rather than the officers in the stack, because the "ram" would move out of the way.

¶ 19 Joliet police officer Thomas Banas testified he had been employed with the department for 12 years and worked in the narcotics unit on September 23, 2009. Banas obtained a search warrant for the residence located at 4 Morris Street after observing marijuana plants behind the

house. Banas explained that he believed a reasonable amount of time to allow the occupants to answer the door would be 10 to 15 seconds. During every execution of a search warrant, the door is checked to see if it is locked before the ram is used. Banas explained the officers would never line up in front of a window and they were angled away from the door. The perimeter team would be far from the home to observe from a distance.

¶ 20 After an officer knocked on the front door, Banas observed a man stand up inside the house. Banas heard another officer announce that a person inside the house was leaving. Banas said approximately 10 seconds passed between the time the officer knocked and when the ram was used. Banas did not see the front door open, but if he had, he would have informed the other officers. Banas worked hundreds of search warrant executions, but this was his first where someone was hurt. According to Banas, if the front door was being opened by someone inside the house, the officers would not have rammed the door.

¶ 21 After plaintiff rested, defendants moved for a directed verdict. The trial court reserved ruling on the motion for a directed verdict pending submission of a written motion.[5]

¶ 22 Next, the defense called Joliet police sergeant Cardwell, who was on scene during the search warrant execution, as their only witness. Plaintiff objected to the introduction of Sergeant Cardwell's testimony on the grounds the defense had not disclosed the sergeant would be called as a defense witness prior to trial. The court sustained plaintiff's objection and prohibited the defense from calling sergeant Cardwell. After the court's ruling, the defense indicated it had no additional witnesses and the court noted rebuttal evidence would not be appropriate. By

[5] On January 4, 2013, defendants filed a written motion for directed verdict and, on January 14, 2013, plaintiff filed her response.

agreement, each party submitted written closing arguments for the court's consideration and the trial court took the matter under advisement for that purpose.

¶ 23 On May 6, 2013, the trial court entered a detailed 14-page written order first denying defendants' motion for a directed verdict. With respect to the issue of whether the front door was locked or unlocked, the court made a factual determination that the door was locked. The court stated, "Although there is evidence that the door was not locked, there is also credible testimony that the door would not have been rammed if it was unlocked, as it would be quicker to simply open the door than to take the time to ram the door open." The court noted plaintiff's witnesses established Troy was moving toward the back of the house. The court found the officers waited a reasonable amount of time before forcibly entering the home. The court commented that, although this was a "terrible accident," plaintiff's claim must be reviewed "not in 20/20 hindsight, but rather from the perspective of the officer[s] at the time of the incident." The court entered judgment on the merits in favor of defendants. Plaintiff appeals.

¶ 24 ANALYSIS

¶ 25 On appeal, plaintiff contends the evidence offered by defendants and relied upon by the court was insufficient to establish habit. Specifically, plaintiff argues the court improperly relied on habit evidence when it found: "Although there is evidence that the door was not locked, there is also credible testimony that the door would not have been rammed if it was unlocked, as it would be quicker to simply open the door than to take the time to ram the door open." Alternatively, plaintiff contends that even if the trial court properly relied on habit evidence, the trial court's finding that the door was locked at the time of entry was contrary to the manifest weight of the evidence presented during the testimony of plaintiff and her family members.

¶ 26 Defendants respond the trial court did not rely upon habit evidence, but simply concluded the front door was locked after weighing the credibility of the plaintiff and her family members who testified before the court. Alternatively, defendants respond that, even if the trial court relied on habit evidence, the habit evidence constituted appropriate evidence to be considered by the trier of fact. Consequently, defendants argue the trial court's findings were not contrary to the manifest weight of the evidence.

¶ 27 First, we address whether the trial court properly considered habit evidence. Rule 406 of the Illinois Rules of Evidence provides that, "Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice." Ill. R. Evid. 406 (eff. Jan. 1, 2011).

¶ 28 In this case, every officer testified that the supervisor on scene is charged with the duty to determine if a door is unlocked before directing another officer to use force to gain entry. The officers testified their supervisor gave the command for forced entry. Based on habit evidence, the court properly concluded that the supervisor gave the command for forced entry only after checking the doorknob and determining the door was locked. Indeed, it was reasonable for the officers to rely on the command to ram the door issued by the supervisor in charge. Certainly, every officer present at the scene is not required to try the doorknob before carrying out the supervisor's directive. Here, one officer was assigned the duty to check the door and that officer gave the command for the others to use force.

¶ 29 Plaintiff attempts to discredit the officers' testimony that they reasonably believed Sergeant Cardwell checked the door before issuing the command to begin a forced entry.

However, plaintiff did not name Sergeant Cardwell as a defendant and did not attempt to prove Sergeant Cardwell neglected to check the door knob before giving his directive to use force. Interestingly, Sergeant Cardwell was available on the day of trial and was prepared to testify. He would be the best person to advise the court whether he checked the door, and his testimony could potentially support plaintiff's position that the door was unlocked when the officers rammed it. However, plaintiff did not call Sergeant Cardwell as a witness and strenuously objected when the defense attempted to present Sergeant Cardwell's sworn testimony to the trial court. Without the direct testimony of Sergeant Cardwell, we conclude the trial court properly relied on the testimony of all four officers who indicated it was Sergeant Cardwell's duty to check the door and the officers reasonably believed he checked the door and would not have commanded the use of force before first making a determination the door was locked.

¶ 30 We note other exigent circumstances could warrant forced entry, such as if the supervisor felt the occupants of the house were responding to the announcement of the officer's presence in such a way that would compromise officer safety or result in the destruction of the items to be seized pursuant to the search warrant. In either case, we conclude there was sufficient evidence in the record to support the court's reliance on proper habit evidence to determine the officers could have gained faster entry, without force, by simply turning an unlocked doorknob. Therefore, the trial court properly determined that Sergeant Cardwell commanded his officers to ram the door following his own determination that the locked door required the officers to execute a forced entry.

¶ 31 Next, we consider whether the court's finding that the force was not excessive was contrary to the manifest weight of the evidence. A court's findings of fact are against the manifest weight of the evidence if the opposite conclusion is clearly evident or unreasonable,

arbitrary, or not based on the evidence presented. *Best v. Best*, 223 Ill. 2d 342, 350 (2006). The trial court is in the best position to observe the conduct and demeanor of the parties and witnesses. *Id.* This court will not substitute our judgment for that of the trial court regarding the credibility of the witnesses, the weight to be given to the evidence or the inferences to be drawn therefrom. *Id.* at 350-51. When a party challenges a trial court's ruling after a bench trial, this court will defer to the trial court's findings of fact unless they are contrary to the manifest weight of the evidence. *Staes & Scallan, P.C. v. Orlich*, 2012 IL App (1st) 112974, ¶ 35. If there is any evidence in the record to support the trial court's findings, we will not disturb the findings and judgment of the trier of fact. *Id*.

¶ 32 Here, plaintiff and her family testified plaintiff opened the unlocked door before the officers used the ram. However, Calvin admitted his testimony at trial was contrary to his deposition testimony which indicated plaintiff did not open the door before the officers forced entry to the home. Thus, the trial court was allowed to discredit his version of the events based on his contradictory deposition testimony.

¶ 33 Further, the officers advised the court they would not have rammed the door if the door was being opened. Instead, the "shield" officer would have stepped in to prevent harm to the officers in the event the front door was being opened from the inside. Here, it was undisputed that the supervising officer gave the command for the "ram" officer to use force.

¶ 34 The court found the officers' version of the events credible and concluded, based on their testimony, that plaintiff was not in the process of opening an unlocked door at the time she sustained her injuries. Accordingly, we defer to the trial court and conclude this determination is not contrary to the manifest weight of the evidence presented to the court. Therefore, we affirm the judgment of the trial court, finding in favor of defendants.

¶ 35 CONCLUSION

¶ 36 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 37 Affirmed.