

SIXTH DIVISION
May 22, 2015

No. 1-12-2548

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	10 MC4 007027
)	
GIOVANNI LYLES-DAWSON,)	Honorable
)	Gregory Robert Ginex,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Hoffman and Justice Lampkin concurred in the judgment.

ORDER

Held: The trial court committed no error and properly exercised its discretion in allowing the State to present relevant evidence and argument regarding the policing tactics and methods the officers were authorized to employ during the traffic stop. For the same reasons, the defendant failed to satisfy his burden of establishing that his trial counsel was ineffective for failing to object to the admission of the challenged evidence and argument.

¶ 1 Following a joint jury trial with his mother, defendant Giovanni Lyles-Dawson was found guilty of possession of drug paraphernalia and obstructing a peace officer stemming from a traffic stop. Defendant's mother, who was in the vehicle with defendant at the time of the traffic stop, was found guilty of obstructing a peace officer.¹ Defendant was sentenced to 18 months conditional discharge, anger management, and 30 days in the Sheriff's Work Alternative Program. Defendant appeals his conviction for obstructing a peace officer (720 ILCS 5/31-1(a) (West 201)). For the reasons that follow, we affirm.

¶ 2 At trial, the State's case consisted of the testimony of police officers Glen Czernik and Justin Labriola of the River Forest Police Department, as well as a video recording taken by the dashboard camera mounted in the officers' patrol car. The video recording was published to the jury. On September 9, 2010, at approximately 6:00 p.m., the officers were in uniform and on duty in a marked patrol car. Officer Czernik was an officer-in-training at the time and Officer Labriola was one of his field training officers. The officers were parked on the 1300 block of Thatcher Avenue and Greenfield Street when a car drove by with a red license plate registration sticker. An in-car computer check of the plate number revealed the vehicle's registration had expired. The officers activated their emergency lights and initiated a traffic stop. When the emergency lights were activated, the patrol car's dashboard camera began recording.

¶ 3 Officer Czernik, who acted as the "contact officer" approached the vehicle on the driver's side while Officer Labriola approached on the passenger side. There were two individuals inside

¹ Defendant's mother is not a party to this appeal. In addition, in response to defendant's amended motion for a new trial, the trial court vacated his conviction for possession of drug paraphernalia on the ground that the jury received an erroneous instruction regarding the definition of drug paraphernalia.

the vehicle. Defendant was the driver and the front passenger was defendant's mother. As the officers approached the vehicle, they smelled a strong odor of cannabis emanating from inside the vehicle. The driver's side window was rolled down "between one and two inches." As Officer Czernik waited for defendant to produce his license and registration, Officer Labriola, who was standing on the passenger side of the vehicle, snapped his fingers to get his partner's attention and then put his fingers to his mouth making a smoking signal. After defendant passed his license and proof of insurance to Officer Czernik, the two officers walked back to their patrol car to discuss how they were going to proceed with the traffic stop. The officers determined that the odor of marijuana emanating from the vehicle gave them probable cause to investigate further.

¶ 4 The officers returned to the vehicle to ask defendant and his mother to exit the vehicle. Officer Czernik asked defendant to turn off the ignition and step out of the vehicle. Defendant asked why he was being ordered to step out of his car. Officer Czernik replied he would tell defendant why once he was out of the car. Defendant again asked why he was being ordered to step out of his car. Officer Czernik replied he had stopped defendant for driving with an expired registration and would explain the rest once defendant exited his car. Defendant replied he did not want to exit his car and that he was going to call a lawyer. Defendant's mother refused Officer Labriola's request to exit the car.

¶ 5 As the officers continued ordering defendant and his mother to exit their vehicle, a man passing by started recording the traffic stop with his cell phone. Officer Labriola ordered the man to move on and stop recording. According to Officer Labriola, the man responded that the woman in the vehicle was his mother, which was confirmed by defendant's mother. Defendant's mother instructed her son to keep recording the traffic stop on his cell phone. Officer Labriola

told the man and defendant's mother that they did not have permission to record the traffic stop and that the stop was already being recorded on the dashboard camera.

¶ 6 Officer Labriola testified that defendant's conduct and the fact that he did not know if there were firearms in the vehicle, made him concerned for his and his partner's safety. Officer Labriola walked over to the vehicle's driver side door to assist Officer Czernik because he was a new officer. Officer Labriola pulled on the vehicle's door handle and after he determined it was locked, he reached inside the window to unlock the door, but pulled his arm out when defendant began rolling up the window. Officer Labriola told defendant he would break the car window if defendant did not exit his vehicle. Defendant still refused to exit his vehicle.

¶ 7 Officer Labriola then walked back over to the vehicle's passenger side and asked defendant's mother to exit the vehicle. The officer informed her that he had probable cause to search the vehicle, that it was an issue of officer safety and he would explain why once she stepped out of the vehicle. Defendant finally exited his vehicle after Officer Labriola informed defendant and his mother that he had smelled cannabis, that smoking cannabis in Illinois was a crime, and that he needed to make sure there was no cannabis in the vehicle.

¶ 8 Officer Czernik placed defendant in handcuffs and recovered from his pocket a small, aluminum 2-inch pipe painted to look like a cigarette, commonly referred to as a "one hitter," used to smoke marijuana. The pipe was filled with a burnt substance. Defendant told the officer there was no marijuana in his vehicle because he had smoked it all.

¶ 9 Defendant persuaded his mother to exit their vehicle. When Officer Labriola grabbed defendant's mother's arm to put her arms behind her back to be handcuffed, she slapped his hand and pulled her arms away. Defendant's mother stated she wanted a female officer to place her into custody. Officer Labriola called a female officer to place defendant's mother into custody.

¶ 10 Defendant and his mother did not present any evidence at trial. The jury returned a verdict finding defendant guilty of possession of drug paraphernalia and obstructing a peace officer. The jury also returned a verdict finding defendant's mother guilty of obstructing a peace officer.

¶ 11 ANALYSIS

¶ 12 Defendant contends his conviction should be reversed and the matter remanded for a new trial on the ground that the trial court abused its discretion by "allowing the State to pursue an inappropriate, prejudicial theme in its case and in closing argument." Specifically, defendant claims he was prejudiced by allegedly irrelevant testimony and closing argument regarding the actions Officers Labriola and Czernik were authorized to take after he and his mother refused to exit their vehicle during the traffic stop. Defendant maintains the prosecutor stressed to the jury that when defendant and his mother initially refused to exit their vehicle, the arresting officers had the legal authority to use physical force to remove them from the vehicle, to break out the vehicle's windows, or have the vehicle towed, but the officers refused to take these measures to resolve the situation. Defendant suggests the challenged argument gave the jury the impression he got off easy during the police encounter because the officers refrained from using their authority to use physical force.

¶ 13 Defendant concedes he failed to preserve this issue for appellate review but urges us to consider the matter as plain error. Because we discern no error, let alone plain error, we affirm defendant's conviction for obstructing a peace officer.

¶ 14 A trial court has the discretion to determine whether evidence is relevant and admissible, and a reviewing court will not disturb such a determination absent a clear abuse of that discretion. *People v. Morgan*, 197 Ill. 2d 404, 455 (2001). An abuse of discretion will be found

only where the trial court's decision is arbitrary, fanciful or unreasonable, or where no reasonable person would take the view adopted by the court. *People v. Illgen*, 145 Ill. 2d 353, 364 (1991). There was no abuse of discretion here.

¶ 15 "Evidence is relevant if it has any tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." *People v. Patterson*, 192 Ill. 2d 93, 115 (2000). Defendant was charged with obstructing a peace officer. Section 31-1(a) of the Criminal Code of 1961 (Code) (720 ILCS 5/31-1(a) (West 2010)), provides that a person obstructs a peace officer when that person knowingly resists or obstructs one known to the person to be a peace officer in the performance of any authorized act within his or her official capacity. At trial, the State had the burden of proving beyond a reasonable doubt that Officers Labriola and Czernik were peace officers performing an authorized act when defendant knowingly resisted or obstructed them. Therefore, testimony regarding the policing tactics and methods the officers were authorized to employ during the traffic stop was admissible and relevant to show that the officers were in fact peace officers, that defendant knew they were peace officers, and that defendant knowingly obstructed the officers while they were acting in their authorized capacity when he refused to comply with their orders to exit his vehicle. The testimony was also admissible and relevant to counter the defense theory that defendant's conduct in refusing to follow the officers' orders did not rise to the level of resistance or obstruction because the officers did not have to resort to using physical force during the traffic stop.

¶ 16 Defendant also contends that the prosecution's argument about the potential danger defendant exposed himself and his mother to by his conduct during the traffic stop was irrelevant and prejudicial because it suggested to the jury that defendant had already gotten off easy and

received a break from the State so that a guilty verdict, even an inaccurate guilty verdict, would serve to right the scales of justice. Our review of the transcript reveals the prosecutor never advanced an argument suggesting the jury should find defendant guilty because he had already received a break from the criminal justice system.

¶ 17 Moreover, courts have recognized there is potential danger for an officer even during a routine traffic stop. See *People v. Gunsaulus*, 72 Ill. App. 3d 440, 443-44 (1979) ("an officer's life may be at peril anytime that he stops a motorist"); *Maryland v. Wilson*, 519 U.S. 408, 414-15 (1997) ("danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car"). In this case, evidence of the officers' knowledge of the potential dangers associated with routine traffic stops was admissible and relevant because it pertained to the officers' perceptions of defendant's conduct in refusing to comply with the officers' orders to exit his vehicle during the traffic stop.

¶ 18 On direct examination Officer Labriola testified: "Because both subjects were, at least at the time, were somewhat argumentative, them not allowing us to get inside the vehicle, and you never know on any traffic stop as much as you want to say it's just a routine traffic stop, its not. You don't know if anybody has weapons inside the vehicle 'cause I can't see what's underneath any of those drivers' seats *** ") It was not improper for the State to elicit testimony and comment upon the fact that the officers were, if necessary, authorized to break out the vehicle's windows, have the vehicle towed and searched for contraband, and use additional force to control the situation to ensure officer safety.

¶ 19 In sum, we find the trial court committed no error and properly exercised its discretion in allowing the State to present relevant evidence and argument regarding the policing tactics and methods the officers were authorized to employ during the traffic stop. For the same reasons, the

defendant has failed in his burden of establishing that his trial counsel was ineffective for failing to object to the admission of the challenged evidence and argument.

¶ 20 Accordingly, for the reasons set forth above, the judgment of the circuit court of Cook County is affirmed.

¶ 21 Affirmed.