2015 IL App (1st) 131590-U

THIRD DIVISION
June 30, 2015

No. 1-13-1590

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 MC 2003187
	)	
ADAM PALOMBI,	)	Honorable
	)	Marguerite A. Quinn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Pucinski concurred in the judgment.
Justice Hyman dissented in the judgment.

O R D E R

¶ 1 ***Held:*** Evidence was sufficient to establish defendant's guilt for obstructing Identification.

¶ 2 Following a bench trial, defendant Adam Palombi was found guilty of obstructing identification, and sentenced to 180 days in jail, time considered served. On appeal, defendant contends that the evidence was insufficient to show that he was lawfully detained when he made his inculpatory statement, and thus was not proved guilty beyond a reasonable doubt of obstructing identification.

¶ 3 On October 25, 2012, defendant was arrested in the Cook County Forest Preserves and charged with failure to register as a sex offender, presence or loitering by a sex offender in or near a public park, and obstructing identification.

¶ 4 Prior to trial, defendant filed a motion to quash his arrest and suppress evidence. He alleged that his property had been illegally searched and confiscated by the Cook County Forest Preserve police, and that his arrest, which was made pursuant to identifying information found during that search, should be quashed and all statements made by him following the arrest should be suppressed.

¶ 5 At the hearing on the motion, Cook County Forest Preserve police officer Michael Stadler testified that about 4:30 p.m. on October 18, 2012, he received a phone call about an illegal structure located in the Bunker Hill Forest Preserve. Following an investigation at that location, he discovered a one-person tent which was zippered shut, and food hanging from a tree nearby. After announcing his office and receiving no response, he unzipped the tent, entered it, and observed a sleeping bag, some clothing, a skateboard, and a zippered backpack. He opened the backpack and found miscellaneous papers inside, including identifying documents bearing defendant's name and date of birth. Officer Stadler testified that he did not have a search warrant for the tent or contents of the backpack, nor an arrest warrant for defendant; however, he acted under a local ordinance, of which the court took judicial notice, which bars the erection of such structures inside the forest preserve. The following day, Officer Stadler confiscated the tent and its contents and brought the items to the police station. He then ran a search of defendant's name

and date of birth, and discovered that he was a sex offender from Utah. Officer Stadler then provided defendant's information to his colleague, Officer William Ortlund.

¶ 6 Officer Ortlund testified that he inventoried the tent and the items found in the woods. He learned that the property owner, defendant, was a sex offender, who had an extraditable arrest warrant in Utah, and that one of the stipulations of his release was that he could not be in a public park. He further testified that his Commander informed him that defendant had called the station to retrieve his property, and on October 28, 2012, Officer Ortlund and other forest preserve officers arranged to meet with defendant in the Dam Number 4 Woods. Commander Janosc made contact with defendant and brought him to that location. Officer Ortlund then made a positive identification of him using photocopies of his driver's license and took him into custody.

¶ 7 The trial court found that the search and seizure of defendant's tent and property did not violate his rights because he had no expectation of privacy in a structure erected illegally in the woods, and that defendant was arrested pursuant to a valid warrant. Accordingly, the court denied the motion to quash arrest and suppress evidence.

¶ 8 Defendant also filed a motion to suppress statements, in which he alleged that a statement he made at the time of his arrest was obtained in violation of his *Miranda* rights, and therefore should be suppressed. At the hearing which followed, Officer Ortlund testified to the sequence of events in a manner similar to his testimony at the initial motion to quash and suppress. He added that once he learned that defendant was the owner of the property found in the woods, and that he had a criminal record, he spoke with Sergeant Paszek and Commander Janosz about

contacting defendant, returning his property to him, and investigating his presence in the forest preserve. Shortly thereafter, defendant voluntarily called the station, identified himself, and requested that his property be returned to him. Arrangements were made for defendant to be picked up at a train station, and brought to the police headquarters, where he could retrieve his property.

¶ 9 On October 25, 2012, defendant arrived at the train station, and was brought to an area in the forest preserve called Dam No. 4 Woods by Commander Janosz. Defendant sat unrestrained in the front passenger seat of the car, and was not arrested at that time. Officer Ortlund met up with them, stood next to the vehicle as defendant exited, and asked him to identify himself. Defendant stated that he was "Kyron Charisma." Officer Ortlund disagreed with him, held up a photocopy of defendant's Oregon identification next to his face, and identified him as Adam Palombi. Following this interaction, defendant was patted down, and a search of his person revealed an ID card identifying him as "Adam Palombi." Defendant was placed under arrest based on the Utah arrest warrant, and informed of his *Miranda* rights, following which he asked for an attorney, and made no further statements.

¶ 10 During cross-examination, Officer Ortlund testified that he did not bring defendant's belongings with him to the meeting point, and did not intend to conduct a property exchange with him, but rather, intended to execute the Utah arrest warrant. He further testified that defendant did not sign a written waiver of the *Miranda* warnings, or make any written statements. During recross-examination, Officer Ortlund testified that he was aware of the name "Kyron Charisma" prior to encountering defendant.

¶ 11 The trial court denied the motion to suppress statements. In doing so, it found that defendant voluntarily called the Forest Preserve Police to get his belongings back, voluntarily arranged to meet them, sat unrestrained in the front seat of the squad car with the Commander, and voluntarily stated that his name was "Kyron Charisma" when Officer Ortlund asked him to identify himself. The court noted that "there was nothing that was * * * obligatory that the defendant had to do." The court also noted, "And, quite frankly, with what the police officer testified to, the police officer had a picture of the defendant who had a warrant in Utah. The defendant wouldn't even have to give his name in order to be properly placed under arrest."

¶ 12 At the commencement of the ensuing trial, the court noted that defendant had waived his right to a jury trial, that the State had dropped the charge regarding defendant's failure to register as a sex offender, and that the case was proceeding on the remaining charges. Officers Stadler and Ortlund testified in substantially the same manner as they did at the hearings on defendant's pretrial motions. At the close of evidence, the court denied defendant's motion for a directed finding on the charge of obstructing identification, but granted the motion on the charge of loitering by a sex offender in a public park.

¶ 13 The defense rested, and following argument, the court found defendant guilty of obstructing identification. In doing so, the court noted that defendant intended to, and succeeded in obstructing his identification when he tried to recover his property using the name of "Kyron Charisma" and "[j]ust because the defendant [used] a known alias doesn't mean that [he was] not trying to obstruct his identification."

¶ 14 On April 15, 2013, the court denied defendant's motion to reconsider, noting that it found the testimony of the officers credible, and that this was a situation where "you had a defendant who was interacting with police officers. This defendant knew that he had an active warrant out of Utah. * * * When the defendant was asked what his name was, he did not give his birth name. He gave a stage name." The court then sentenced defendant to 180 days in jail, time considered served, and imposed $369 in fines, fees, and costs.

¶ 15 In this appeal from that judgment, defendant contends that the State failed to prove him guilty of obstructing identification beyond a reasonable doubt because it failed to show that he gave a false name while he was "detained, arrested, or a witness to a criminal offense."

¶ 16 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant question for the reviewing court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). This standard recognizes the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). In applying this standard, we allow all reasonable inferences from the record in favor of the prosecution (*People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)), and will not overturn a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of defendant's guilt (*People v. Wheeler*, 226 Ill. 2d 92, 115 (2007)).

¶ 17 In order to prove that defendant obstructed his identity in this case, the State was required to show beyond a reasonable doubt that he intentionally or knowingly furnished a false or fictitious name to a police officer who has either (1) lawfully arrested him; (2) lawfully detained him; or (3) requested the information from a witness to a criminal offense. 720 ILCS 5/31-4.5(a) (West 2012). The record clearly shows that defendant was not under arrest or a witness to a criminal offense when he provided the false or fictitious name to the police inquiry, and thus his conviction rests on whether he was "lawfully detained" under the statute.

¶ 18 The evidence adduced by the State showed that the Forest Preserve Police were investigating defendant's presence in the forest preserve after finding his tent and personal belongs there and determining that they belonged to a sex offender who had an extraditable warrant from Utah. Shortly thereafter, defendant called them about his property and agreed to be picked up at a train station and driven to Dam No. 4 Woods to retrieve the items which had been confiscated by police. Officer Ortlund testified that he did not intend to conduct a property exchange defendant at the designated location, but rather, expected to execute the Utah arrest warrant. When defendant arrived unrestrained in the front seat of the police with the Commander, Officer Ortlund asked him to identify himself, and defendant falsely stated that his name was "Kyron Charisma." Officer Ortlund confirmed that defendant was, in fact, Adam Palombi, by comparing his face to a photocopy of his driver's license, and he was promptly arrested based on the valid arrest warrant. On these facts, the court found him guilty of the charged offense.

¶ 19 In challenging that determination, defendant contends that because the trial court found that he was not in custody when he provided the statement, and that his actions were voluntary up to the time of the arrest, he was not "lawfully detained" at the time he responded to the officer's inquiry. In support of this contention, defendant cites the court's ruling on his motion to quash arrest and suppress evidence where he alleged a violation of *Miranda.* Our review shows that the comments made by the court in denying his motion reflect the court's focus on the voluntary nature of defendant's actions with the police, including his response to the officer's query regarding his identity, and thus there was no Fourth Amendment violation. Contrary to defendant's assertion, the court did not expressly find that defendant was not "in custody" when he made the inculpatory statement, although that inference may be inferred from the court's comments. However, that does not exclude the finding that he was "lawfully detained" at that time.

¶ 20 We observe that a "custodial interrogation" for purposes of *Miranda* warnings is distinct from a "lawful detention" for purposes of the obstructing identification charge. In Illinois, a police officer with reasonable suspicion that a person has committed an offense may lawfully stop and question that person for a reasonable period of time, and may demand his name and address and an explanation of his actions. This form of temporary detention and questioning is conducted in the vicinity of where the person was stopped (725 ILCS 5/107-14 (West 2014)), and constitutes a lawful detention, or "*Terry* stop," which is different from being in custody. See, *e.g.*, *People v. White,* 331 Ill. App. 3d 22, 27 (2002) (noting difference between being in custody for purposes of *Miranda* and being "merely detained" for purposes of *Terry*); *People v. Jeffers*,

365 Ill. App. 3d 422, 429 (2006). A detention occurs when a reasonable, innocent person in the circumstances would believe that he or she would not be free to leave. *People v. Schronski*, 2014 IL App (3d) 120574, ¶ 22, *reh'g denied* (Aug. 6, 2014).

¶ 21 Here, Officer Ortlund testified that he arranged the meeting with defendant in order to execute the Utah arrest warrant, rather than to conduct a property exchange with him. Even though defendant voluntarily agreed to meet with the officers at the pre-arranged location, the circumstances, once there, show that the officers were investigating his presence in the woods given the information obtained from his personal effects, and that he was being temporarily detained for this purpose. After examining the circumstances surrounding defendant's interaction with the police, we conclude that defendant was not "in custody" for purposes of *Miranda* when he made the false statement, but that the evidence was sufficient to allow the trial court to find that he was being lawfully detained while the officers investigated defendant's situation, including his presence in the woods and the outstanding Utah warrant, and he was thus found guilty of obstructing identification beyond a reasonable doubt. *People v. Briseno*, 343 Ill. App. 3d 953, 959 (2003).

¶ 22 In reaching this conclusion, we have considered defendant's assertion that the State cannot argue on appeal that defendant was detained when the State argued at trial that defendant was not arrested or subject to a "custodial interrogation" for the purposes of *Miranda* when he gave the voluntary statement at issue. As pointed out above, custodial interrogation and lawful detention are two distinct concepts, and in making his argument, defendant has cited excerpts of the court's finding regarding the voluntariness of his statement vis-à-vis *Miranda*. Thus, contrary

to defendant's assertion, the State's position is not inconsistent with the position it took at trial, and it is not estopped from adopting the position on appeal that defendant was being lawfully detained in this court. *People v. Henderson*, 2013 IL 114040, ¶ 23 (holding that as the prevailing party, the State can raise any reason or theory appearing in the record in support of the judgment on appeal, consistent with the position it adopted in prior proceedings).

¶ 23 Defendant also contends that his statement was not made with the intent to obstruct his identification, where Officer Ortlund testified that he was familiar with the name "Kyron Charisma," and defendant was "merely consistent in offering a name he knew the police had connected to the property." We disagree. The record shows that defendant had an outstanding arrest warrant from Utah and was prohibited from being inside any public parks as a condition of his release. His property was confiscated by the Illinois Forest Preserve police and he sought to recover it, using the false name "Kyron Charisma." Although Officer Ortlund was aware of the name, the trial court properly noted that defendant's legal name was "Adam Palombi," and his use of a known alias did not negate his intent to obstruct his true identity from the police, but under the circumstances, actually supported the finding that defendant intentionally or knowingly used the false name.

¶ 24 Finally, defendant contends that the police arrested him promptly despite giving them a false name, and therefore he did not actually obstruct the officers in the performance of their duties. In making this argument, he relies on *People v. Baskerville*, 2012 IL 111056, ¶ 38; and *People v. Taylor*, 2012 IL App (2d) 110222, ¶¶ 3, 17, which involved prosecutions for obstruction of justice. As the State correctly points out, however, to prove obstructing

identification, unlike obstruction of justice, the State is not required to show that defendant actually succeeded in impeding the police in their duties. We also reject defendant's reliance on *People v. Jenkins*, 2012 IL App (2d) 091168, ¶ 27; and *People v. Kotlinski*, 2011 IL App (2d) 101251, ¶¶ 57, 60, which involved the obstruction of justice statute, and are therefore inapposite to the case at bar.

¶ 25 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.

¶ 27 JUSTICE HYMAN, dissenting.

¶ 28 I respectfully dissent. The central issue involves whether the State proved beyond a reasonable doubt that Adam Palombi was being detained when he identified himself as Kyron Charisma. Based on the evidence, I would conclude that he was not.

¶ 29 To sustain a conviction of obstructing identification, the State must prove that the defendant: (1) intentionally or knowingly provided a false or fictitious name, residence address, or date of birth to a peace officer; and (2) was either (a) lawfully arrested or detained, or (b) the information was requested from an individual that was reasonably believed to have witnessed a crime. 720 ILCS 5/31-4.5 (West 2012). Palombi was not under arrest or a witness to a criminal offense when he told the forest preserve police officers that his name was Kyron Charisma. Thus, as the majority notes, his conviction rests on a finding of his being "lawfully detained" at the time.

¶ 30 The State fails to define what it means to be "detained," but cases addressing the question generally hold that detention occurs when a suspect reasonably believes he or she is not free to

leave. *People v. McKinney*, 277 Ill. App. 3d 889 (1996). After the Cook County Forest Preserve police confiscated Palombi's belongings in the Bunker Hill Forest Preserve, where he illegally camped, Palombi voluntarily contacted the officers and arranged to meet them to retrieve his things. Palombi arranged to be picked up near a train station, voluntarily got into the front seat of Commander Janosz's squad car, and went with him to the forest preserve. The Forest Preserve police did not order Palombi to meet them nor did they restrain him in any way in the squad car. Given that Palombi initiated the encounter with the intent of getting his property back and the officers' conduct gave him no reason to think otherwise, it would be reasonable for Palombi to believe he was not being detained and free to leave.

¶ 31 The majority notes that Officer Ortlund testified that he agreed to meet Palombi in the forest preserve not to conduct a property exchange but so that he could execute the Utah arrest warrant. But, the legal test is not what the officers thought or intended during the interaction, but rather, what the suspect reasonably believed. I would assert that a reasonable person who contacted the police of his own accord and voluntarily agreed to meet them would believe that he or she was not being detained and was free to leave.

¶ 32 Indeed, that is what the State argued during the pretrial hearing on Palombi's motion to suppress his statement. The State asserted that Palombi's *Miranda* rights were not triggered because he "was free to leave." The State cannot have it both ways—argue before the trial court that for purposes of *Miranda* Palombi was free to leave and then argue that for purposes of proving Palombi guilty of obstructing identification that he was being lawfully detained. *People v. Denson*, 2014 IL 116231, ¶ 17 ("while a prevailing party may defend its judgment on any

basis appearing in the record, it may not advance a theory or argument on appeal that is inconsistent with the position taken below."). Further, if the State is now correct in its assertion that Palombi was being detained and was not free to leave when Officer Ortlund asked him his name, he gave the statement without the benefit of Miranda warnings, which would warrant a reconsideration of the trial court's denial of his motion to suppress. *Miranda,* 384 U.S. at 444 (defendant's statements stemming from "custodial interrogation" inadmissible unless preceded by defendant's knowing and intelligent waiver of right not to be compelled to testify against or incriminate self and right to have attorney present during interrogation).

¶ 33 I would further argue that Palombi never actually obstructed his identification or intended to do so. Palombi occasionally went by the name Kyron Charisma and some of his belongings were identifiable with that name. Officer Ortlund testified that he was familiar with the name Kyron Charisma and knew that a person who went by that name was associated with the items confiscated in the forest preserve. Officer Ortlund also knew that Kyron Charisma and Adam Palombi were the same person, as evidenced by the fact that he had Palombi's identification and knew that he was wanted on a Utah warrant. Thus, when Palombi told Officer Ortlund his name was Kyron Charisma so that he could claim his belongings, he was not, in fact, obstructing his identity.

¶ 34 Just because an individual gives a name other than his or her legal name does not, in itself, violate the statute because the statute only criminalizes an individual giving police a false or fictitious name; the statute does not require an individual give only his or her legal name. Some individuals go by more than one name and are commonly known by and prefer a name

other than their legal name—an alias, stage name, or maiden name, and the other name identifies them as well, if not better, than their legal name. It might be an alias, stage name, or maiden name. The State must prove that, as applied to the defendant, the name he or she gave the police was false or fictitious. For example, would the writer and radio personality Garrison Keillor be susceptible to an obstruction of identity charge were he to give police his stage name rather than his real name, Gary Edward Keillor? How about the entertainer and former governor Hulk Hogan identifying himself by the name with which everyone associates him rather than his legal name, Terry Jean Bollette? Or, a woman whose legal last name is that of her spouse, but who is known by her maiden name by her colleagues, friends, and family? None of these situations, I submit, constitutes an obstruction of identity under the statute. The names by which they are known identify them, and as applied to them are neither false nor fictitious. The State failed to show that Kyron Charisma was a false and fictitious name as applied to Palombi.

¶ 35 Accordingly, the absence of evidence that Palombi was being lawfully detained when he identified himself or that the name Kyron Charisma obstructed his identity justify reversal.