2015 IL App (1st) 131646-U

FIRST DIVISION
August 31, 2015

No. 1-13-1646

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 CR 16036
	)	
SUNNI NOBLE,	)	Honorable
	)	Domenica A. Stephenson,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

O R D E R

¶ 1 ***Held*****:** Defendant's conviction for felony resisting a peace officer affirmed over his contentions that the State was required to show that he knowingly injured a peace officer and that the evidence was insufficient to sustain his conviction; the trial court did not commit plain error in issuing a jury instruction that did not reflect that the State was required to show that defendant knowingly injured a peace officer; trial counsel was not ineffective for failing to object to the use of that jury instruction.

¶ 2 Following a jury trial, defendant Sunni Noble was found guilty of felony resisting a peace officer and sentenced to 18 months' imprisonment. On appeal, defendant contends that the evidence was insufficient to sustain his conviction because the State was required to show that he knowingly injured a peace officer, and it failed to do so beyond a reasonable doubt. In the alternative, defendant argues that it was plain error for the trial court to issue a jury instruction which omitted the requisite mental state, thereby allowing the jury to find him guilty without finding that he knowingly injured a peace officer.

¶ 3 Defendant was charged with aggravated battery and resisting a peace officer in relation to events that occurred on August 18, 2012. At trial, Bobbie Clopton, who owns the apartment building located at 6535 South Washtenaw in Chicago, testified that shortly after 10:20 a.m. on the day of the incident, two officers responded to his call reporting that someone was trespassing on his property. Clopton remained outside while the officers entered the first floor apartment. Clopton heard defendant cursing loudly, and saw defendant acting belligerently when he exited the apartment. On cross-examination, Clopton testified that neither defendant nor the officers had any injuries at that time.

¶ 4 Chicago police officer Michael Durkin testified that around 10 a.m. on the day of the incident he was on patrol with Officer Donna Walsh in an unmarked police car. He wore civilian clothing, as well as a gun belt and a vest with his star and name plate. At that time, he and Officer Walsh responded to a call of criminal trespass in progress at 6535 South Washtenaw. Upon arriving, they spoke with Clopton, then knocked on the apartment door. A man, whom Officer Durkin identified in court as defendant, opened it and the officers entered the apartment. Officer Durkin informed defendant that he was going to be arrested for trespassing and asked him to put his hands behind his back, but defendant did not comply. Defendant pulled away from

Officer Durkin and stated, "honky, don't put your hands on me. Who the fuck you think you is. I ain't leaving this motherfucker. *** Go ahead, put your hands on me. This motherfucking piece of shit city gonna to pay me big. You all best believe that." After Officer Durkin placed him in handcuffs, defendant became more agitated. Defendant refused to cooperate when Officer Durkin tried to escort him to a transport vehicle, and stated, "fuck you, honky. Take these cuffs on me, bitch, and see what happens motherfucker. I'll kill you, white ass." Officer Durkin asked defendant to calm down and managed to place him in the vehicle. Officer Bourn then transported defendant to the police station.

¶ 5 Officer Durkin further testified that upon arriving at the police station, defendant was difficult and initially refused to exit the transport vehicle. Officer Bourn had to carry defendant to the door of the police station and officers Durkin, Walsh and Kasput entered the station with them. Once inside, defendant told Officer Durkin, "take these cuffs off me, bitch. I'm going to fuck you up *** I'm going to spit in your face." Officer Durkin placed defendant in a holding cell inside the processing room, at which point defendant spit in his face. He instructed defendant to sit down, but defendant refused, so Officer Durkin attached a set of handcuffs onto the handcuffs that were already on defendant and proceeded to attach the other end of the second set to metal bars on the wall. In the process of doing so, defendant pulled away from him, causing Officer Durkin's fingers to get cut by the grooves on the handcuffs. After Officer Durkin successfully handcuffed defendant to the wall, he left the room, but could see defendant through the glass door. Officer Durkin heard defendant screaming and saw him banging his head on the wall, causing it to bleed. Officer Durkin called paramedics, but defendant refused treatment from them. Officer Durkin identified People's exhibits 3, 4 and 5 as photographs of the injuries he sustained to his right hand.

¶ 6 On cross-examination, Officer Durkin testified that he did not go to the hospital or receive any treatment for the cuts he sustained on his hand and denied slamming defendant's head into the wall. He further testified that he created a felony complaint for aggravated battery in this case, and therein stated that defendant slashed his handcuffs across Officer Durkin's finger, causing injury.

¶ 7 Chicago police officer Donna Walsh testified and corroborated Officer Durkin's description of events that transpired at the apartment building and outside of the police station on the day of the incident. Officer Walsh further testified that she did not enter the processing room and thus did not see Officer Durkin sustain the injury to his hand.

¶ 8 Chicago police officer Victor Kasput testified that when he arrived at the police station on the day of the incident, he assisted officers Durkin and Bourn in escorting defendant into the building because defendant was being non-compliant. Once inside the police station, he heard defendant tell Officer Durkin that he was going to "kick his ass," and that he was going to spit on him. After Officer Kasput assisted in escorting defendant into the processing room and holding cell, he left the area and thus did not see defendant spit on Officer Durkin or witness Officer Durkin sustain the injury to his hand.

¶ 9 The parties stipulated that defendant refused to be treated by paramedics at the police station on the day of the incident. The State then rested and its exhibits were admitted into evidence.

¶ 10 The defense consisted of a stipulation that on the day of the incident defendant was taken to Holy Cross Hospital and was treated for a head contusion and a laceration to his left eyebrow, for which he received two sutures. The parties further stipulated that Detective Timothy Nolan interviewed Officer Durkin about what occurred on the day of the incident, and, subsequent to

the interview, Detective Nolan prepared a case supplementary report. The contents of that report do not reflect that Officer Durkin stated that defendant was going to spit in his face or that defendant slashed him with his handcuffs. The defense then rested.

¶ 11 Following closing arguments, and its deliberations, the jury found defendant guilty of resisting or obstructing of a peace officer and not guilty of aggravated battery. The trial court subsequently sentenced defendant to 18 months' imprisonment.

¶ 12 On appeal, defendant first challenges the sufficiency of the evidence to sustain his conviction. Defendant contends that pursuant to the Criminal Code (Code), the State was required to prove that he knowingly caused injury to Officer Durkin, and that the State failed to do so. This argument involves two separate components to the question of the sufficiency of the evidence that was presented at trial. Because the first question is an issue of statutory interpretation, we review it *de novo*. *People v. Sanchez*, 2013 IL App (2d) 120445, ¶ 18.

¶ 13 The Code defines the offense of resisting or obstructing a peace officer as follows:

> "(a) A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer *** of any authorized act within his or her official capacity commits a Class A misdemeanor.
>
> ***
>
> (a-7) A person convicted for a violation of this Section whose violation was the proximate cause of an injury to a peace officer *** is guilty of a Class 4 felony." 720 ILCS 5/31-1 (a), (a-7) (West 2012).

According to defendant, although the word "knowingly" only appears in subsection (a), it should also be read into subsection (a-7) of this provision, thereby requiring the State to show that he knowingly caused injury to Officer Durkin.

¶ 14 The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. *People v. Donoho*, 204 Ill. 2d 159, 171 (2003). The best evidence of legislative intent is the language of a statute, and, when possible, a court should interpret statutory language according to its plain and ordinary meaning. *Id.* When statutory language is clear and unambiguous, it must be applied as written, and a court should not depart from the plain language of a statute by reading into it exceptions, limitations, or conditions that the legislature did not intend. *McFatridge v. Madigan*, 2013 IL 113676, ¶ 18.

¶ 15 In this case, the plain language of the statute reflects that the legislature chose to include the word "knowingly" in subsection (a), and to not include it in subsection (a-7), of the statutory provision for the offense of resisting or obstructing a peace officer. When the legislature includes particular language in one section of a statute but omits it in another section of the same statute, courts presume that the legislature acted intentionally and purposefully in the inclusion or exclusion. *Id.* at ¶ 25, citing *Chicago Teachers Union, Local No. 1 v. Board of Education of the City of Chicago*, 2012 IL 112566, ¶ 24. Here, the legislature purposefully chose to exclude the word "knowingly" from subsection (a-7) of the offense at issue, and we will not read such a condition into that subsection. See *People v. Johnson*, 2013 IL 114639, ¶ 12.

¶ 16 Accordingly, we find that pursuant to the plain language of the Code, to prove defendant guilty of resisting or obstructing a peace officer, the State was not required to show that defendant knowingly injured Officer Durkin. Rather, it only had to show beyond a reasonable doubt that defendant knowingly resisted or obstructed the performance of a person he knew to be a peace officer engaging in an authorized act within his official capacity, and that such action on his part was the proximate cause of injury to Officer Durkin. 720 ILCS 5/31-1 (a), (a-7) (West 2012).

¶ 17 In reaching this conclusion, we have considered defendant's argument that section 4-3 of the Code supports his argument. This section provides that (a) unless the offense at issue is one of absolute liability, a defendant must have acted with the applicable mental state in order to be found guilty of that offense, and (b) if the statute defining the offense prescribed a particular mental state with respect to the offense as a whole, without distinguishing among the elements of the offense, that mental state applies to each such element. 720 ILCS 5/4-3(a), (b) (West 2012).

¶ 18 We note that defendant has not cited any case in which a court has held that the word "knowingly" should be read to apply to the proximate cause element in subsection (a-7) of the offense at issue, let alone a case which has relied upon section 4-3 of the Code to so hold. Rather, defendant merely argues that reading a mental state into the proximate cause element in this case "makes sense," and cites to *People v. Sanchez*, 2013 IL App (2d) 120445, ¶¶ 20-21, in support. In *Sanchez*, defendant was convicted of identity theft, which was defined as "knowingly us[ing] any personal identifying information or personal identification document of another person to fraudulently obtain credit, money, goods, services or other property." *Id.* at ¶¶ 16-17. On appeal, the reviewing court reversed defendant's conviction, finding that to prove defendant guilty, the State had to not only show that she knowingly used the identification document, but that she also knew that it belonged to another person. *Id.* at ¶¶ 19-21.

¶ 19 Thus, in *Sanchez*, "knowingly" was held to apply to each separate phrase that was contained within a single statutory sub-section. However, in this case, two statutory sub-sections are involved and defendant would have us apply "knowingly" not only to each phrase contained within subsection (a), but also to the proximate cause language that is contained in sub-section (a-7). *Sanchez* does not stand for this proposition, and defendant's reliance upon it is misplaced.

¶ 20 We have also considered defendant's argument that subsection (a-7), which contains the proximate cause language, raises the offense from a misdemeanor to a felony, and felonies are generally not absolute liability offenses. However, proximate cause requires foreseeability (see *People v. Cervantes*, 408 Ill. App. 3d 906, 908-910 (2011)), and it is this requirement of foreseeability that prevents the offense at issue from being one of absolute liability and protects offenders from the unlimited liability defendant's argument envisions.

¶ 21 We now turn to the question of whether the evidence presented at trial was sufficient to sustain defendant's conviction. The standard of review on a challenge to the sufficiency of the evidence 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. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This standard applies to all criminal cases, whether the evidence is direct or circumstantial, and acknowledges the responsibility of the trier of fact to determine the credibility of witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve conflicts in the evidence. *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). A reviewing court will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).[1]

¶ 22 As discussed above, to sustain defendant's conviction, the State had to show beyond a reasonable doubt that he knowingly resisted or obstructed the performance of a person he knew to be a peace officer engaging in an authorized act within his official capacity, and that such

[1] We note that although in his opening brief, defendant argued that this issue was subject to *de novo* review, in his reply brief, he acknowledged that it should be reviewed in the light most favorable to the prosecution.

action on his part was the proximate cause of injury to that peace officer. 720 ILCS 5/31-1 (a), (a-7) (West 2012).

¶ 23 At trial, Officer Durkin testified that when he encountered defendant on the day of the incident, he was on duty, was wearing his vest which displayed his star and name plate, as well as a gun belt, and informed defendant that he was being arrested for trespassing. Officer Durkin further testified that defendant was non-cooperative during the entirety of the incident, from what transpired at the apartment building, to when officer Durkin sustained the injury to his hand at the police station. Specifically in relation thereto, Officer Durkin testified that when he was attempting to handcuff defendant to a wall in the processing room at the police station, defendant pulled away from him, causing Officer Durkin's fingers to get cut by the grooves on the handcuffs he was holding. The State submitted photos of the cuts to Officer Durkin's hand.

¶ 24 We note that defendant does not appear to contest that he knew that Officer Durkin was a peace officer, that he knew that Officer Durkin was engaging in an authorized act within his official capacity, or that he resisted Officer Durkin's performance of this authorized act. In his opening brief, defendant states that in pulling away from Officer Durkin, he "was merely trying to avoid being cuffed to the wall," and that although he had been "actively resisting [Officer Durkin's] efforts from the beginning," he "did not violently jerk away," but rather, simply pulled away. That said, we find that in viewing the evidence presented in the light most favorable to the prosecution, the State proved beyond a reasonable doubt that defendant intentionally pulled away from Officer Durkin, thereby knowingly resisting a person he knew to be a peace officer engaged in an authorized act within his official capacity.

¶ 25 Further, given that Officer Durkin was holding metal handcuffs at the time defendant pulled away from him, we find that defendant could have foreseen that Officer Durkin might be

injured due to his actions, and thus the State proved that defendant was the proximate cause of the injury Officer Durkin sustained. See *Cervantes*, 408 Ill. App. 3d at 908-910 (finding that a defendant who led an officer on a chase proximately caused the officer's injuries where the defendant should reasonably have foreseen that a pursuing officer might be injured in a fall). In sum, we find that the State proved defendant guilty beyond a reasonable doubt of felony resisting a peace officer.

¶ 26 Defendant also argues that the trial court erred by issuing a non-IPI jury instruction that allowed the jury to find him guilty without finding that he knowingly caused the injury that Officer Durkin sustained. In so arguing, defendant acknowledges that he failed to preserve this issue for review, but maintains that we may review it pursuant to the plain error doctrine. Given that we found that the State was not required to show that defendant knowingly injured Officer Durkin, this argument has no merit. Similarly, defendant's alternative argument that trial counsel was ineffective for failing to object to the use of the aforementioned jury instruction is equally without merit.

¶ 27 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 28 Affirmed.