2015 IL App (2d) 130775-U
No. 2-13-0775
Order filed July 22, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Winnebago County.
Plaintiff-Appellee,	)	
v.	)	No. 12-CF-1503
DAVID L. GODDARD III,	)	Honorable Randy Wilt,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hudson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendant showed no error, and thus no plain error, in the State's closing argument: although the charge of resisting a peace officer alleged that defendant resisted his arrest, the State could infer from the evidence, and argue to the jury, that defendant resisted his arrest when he resisted being handcuffed; (2) the trial court did not err in answering the jury's question: the jury asked whether defendant was charged with resisting a peace officer or resisting arrest, and the court properly answered, without attempting to discern and resolve any further confusion, that he was charged with a resisting a peace officer.

¶ 2 Following a jury trial, defendant, David L. Goddard III, was convicted of resisting a peace officer (720 ILCS 5/31-1(a) (West 2010)). He appeals, contending that the prosecutor and the trial court misled the jury as to the State's burden of proof. We affirm.

¶ 3 Defendant was indicted on three counts of domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2010)), and one count each of disarming a peace officer (720 ILCS 5/31-1a(a) (West 2010)) and resisting a peace officer (720 ILCS 5/31-1(a) (West 2010)). This last count alleged that defendant resisted the performance of an authorized act, being defendant's arrest.

¶ 4 At trial, defendant's brother, Shane Goddard, testified that on May 23, 2012, he lived in Rockford with his wife and three children. Defendant was staying with him. That evening, defendant became unruly and Shane asked him to leave. Defendant's behavior continued to concern Shane, to the point that Shane called the police.

¶ 5 When a deputy arrived, Shane followed him into defendant's room. He believed that defendant was intoxicated. According to Shane, the deputy told defendant that he wanted to handcuff him for his own protection. The deputy then began to handcuff defendant in the bedroom. As the deputy was bringing defendant toward the doorway, defendant lunged toward Shane, causing defendant's cigarette to hit Shane in the face. The deputy then took defendant to the ground. At that point, defendant head-butted Shane.

¶ 6 Deputy Joseph Broullard testified that he responded to the call. As he spoke with Shane and his wife outside, he could hear someone yelling and hitting the walls inside the house. Broullard entered the house and encountered defendant, who was irate, violent, and frustrated. Defendant retreated to his room, with Broullard following, trying to calm him down. However, defendant only seemed to get worse. He started pacing around, telling Shane and Broullard that "he was going to kill us both." Broullard then advised defendant that he was under arrest and ordered him to turn around and put his hands behind his back.

¶ 7 Defendant initially complied, and Broullard was able to get one cuff on him. Before he could secure the second cuff, however, defendant pulled away and lunged at his brother. When defendant was finally secured, an ambulance transported him to the hospital.

¶ 8 The jury was instructed that, to sustain the charge of resisting a peace officer, the State had to prove that Broullard was a peace officer, that defendant knew he was a peace officer, and that defendant knowingly resisted the performance by Broullard of an authorized act within his official capacity.

¶ 9 In closing, the prosecutor quoted this instruction. She argued that Broullard "told the defendant to place his hands behind his back so he could be handcuffed. As a peace officer, he is allowed to handcuff unruly subjects." She further argued that the State had proved this offense because "not placing the second hand behind his back, the acts of not complying with being handcuffed is resisting a peace officer."

¶ 10 The trial court granted defendant's motion for a directed verdict on one count of domestic battery. During deliberations, the jury sent the court a note asking, "Is David Goddard resisting a peace officer or resisting arrest?" The trial court responded, without objection, "The charge is resisting a peace officer." The jury found him guilty of resisting. The court sentenced him to 364 days in jail with the time considered served. Defendant timely appeals.

¶ 11 Defendant's primary contention, while somewhat difficult to follow, appears to be as follows. To convict defendant of resisting a peace officer, the State had to prove that he knowingly resisted an authorized act by an officer acting in his official capacity. See 720 ILCS 5/31-1(a) (West 2012). The authorized act alleged in the indictment was defendant's arrest. However, the prosecutor, in closing argument, never referred to defendant's arrest, arguing instead that he resisted the act of being handcuffed. This allowed the jury to find defendant

guilty of resisting without finding an element alleged in the indictment, namely that he resisted his arrest.

¶ 12 We note first that defendant, who represented himself at trial, did not object to any of the remarks of which he now complains. Consequently any error is forfeited. *People v. Tapia*, 2014 IL App (2d) 111314, ¶ 36. Defendant invites us to review these forfeited errors for plain error. Generally, a plain-error analysis first requires a finding of error. *People v. Chapman*, 194 Ill. 2d 186, 225 (2000). Thus, we consider whether the complained-of remarks were erroneous.

¶ 13 A prosecutor is given wide latitude in closing arguments. *People v. Page*, 156 Ill. 2d 258, 276 (1993). This includes commenting on the evidence and drawing any legitimate inferences from the evidence, even if they are unfavorable to the defendant. *People v. Simms*, 192 Ill. 2d 348, 396 (2000). The prosecutor has the right to assume the truth of the State's evidence. *People v. Jennings*, 254 Ill. App. 3d 14, 21 (1993). Moreover, "the State is to be given latitude to determine which aspects of its case to accentuate in its closing argument." *People v. Henry*, 318 Ill. App. 3d 83, 85 (2001).

¶ 14 Here, Broullard testified that he told defendant he was under arrest before attempting to handcuff him. Thus, the prosecutor's argument, equating handcuffing with an arrest, was a reasonable inference from the evidence. Defendant makes much of his brother's contrary testimony, that Broullard did not tell defendant he was under arrest until after attempting to place him in handcuffs. However, as noted, the prosecutor was entitled to assume the truth of her own evidence, and thus could rely on Broullard's testimony. Moreover, the prosecutor could choose to de-emphasize that aspect of her case, and was not obligated to frame the issues to defendant's liking.

¶ 15 Defendant further contends that the trial court compounded the alleged error in the way it answered the jury's question. The jury sent out a note asking whether defendant was charged with resisting a peace officer or resisting arrest. The court answered that he was charged with resisting a peace officer.

¶ 16 Generally, the trial court has a duty to provide instructions to the jury when the jury poses an explicit question or requests clarification on a point of law. *People v. Averett*, 237 Ill. 2d 1, 24 (2010). Here, there is no question that the court's answer was correct. Count V of the indictment alleged that defendant committed the offense of "RESISTING A PEACE OFFICER," and its substance tracked the language of the statute. See 720 ILCS 5/31-1(a) (West 2012).

¶ 17 Defendant argues that this answer served no purpose, and the court should have realized that the jury was seeking guidance about the elements of the offense and reminded it that the State had to prove that defendant was being arrested. However, the State did not have to prove that; the jury instruction properly stated, per the elements of the offense, that the State had to prove resistance only of an authorized act. See *People v. Nathan*, 282 Ill. App. 3d 608, 611 (1996) (manner of committing offense is not an element of the offense). In any event, as noted, absent exceptions not present here, the court has a duty to answer only questions that the jury explicitly poses, and the court did so. Defendant cites no authority for the proposition that the court had a duty to attempt to discern the jury's thought process and provide additional information that it might have been seeking.

¶ 18 The judgment of the circuit court of Winnebago County is affirmed.

¶ 19 Affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCVS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).