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2015 IL App (3d) 130990-U

Order filed December 14, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0990
CHRISSEY M. RIVERA,)	Circuit No. 13-CM-12
Defendant-Appellant.)	Honorable Domenica Osterberger, Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Carter and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court abused its discretion in refusing to instruct the jury on self-defense; defendant presented some evidence supporting the instruction.
- ¶ 2 A Will County jury found defendant, Chrissy M. Rivera, guilty of resisting a peace officer. Defendant appeals, arguing that the trial court abused its discretion in refusing to instruct the jury on the self-defense principle, as requested by defense counsel. We reverse and remand for a new trial.

¶ 3 BACKGROUND

¶ 4 Following a November 2012 traffic stop, the State charged defendant with resisting a peace officer. The matter proceeded to trial where the State called Steven Ficek, a Bolingbrook police officer, as its only witness.

¶ 5 Ficek testified he was conducting patrol with Cross, a field-training officer, on the night of the offense. Ficek stated he pulled over defendant after observing that her rear registration light was not working. Ficek approached defendant's car and requested her driver's license. Defendant provided an Illinois identification card. After running the name on the card, Ficek discovered that defendant held a valid driver's license. Ficek told defendant that he stopped her due to the broken light and that he was issuing her a citation. He explained that she needed to sign the citation since she could not provide her license as a bond. Defendant refused to sign the citation. Ficek told defendant that in absence of defendant's license as a bond, her only alternative was to accompany him to the police station and arrange for a cash bond. Defendant continued to refuse to sign the citation.

¶ 6 Ficek then requested that defendant get out of the car so he could place her in temporary custody for the purpose of transporting her to the station to set up a cash bond. Defendant did not exit the car but, rather, picked up her cell phone and started dialing a number. Ficek, again, told defendant to step out of the car. Defendant stared forward and did not say anything. Ficek then told defendant she was under arrest and opened the car door in an attempt to remove her from the vehicle. Ficek grabbed defendant's arm and the ponytail of her hair to get her out of the car. Defendant stated, "don't touch me" and lunged toward the passenger side door. Cross walked up to defendant's car to assist, and the two officers pulled defendant out of the car,

placed her on the ground, and handcuffed her. Ficek testified that neither he nor Cross ever struck, maced, or placed defendant in any type of physical hold.

¶ 7 The defense then presented defendant's testimony. Defendant testified that after she stopped her car, Ficek told her she had a broken light over her rear license plate. Defendant asked if she could step out of the car to inspect the light; she wanted to verify that the light was, in fact, broken. Ficek did not allow her to inspect the light. Instead, Ficek insisted that she sign the ticket. Defendant repeatedly told Ficek that she would not sign the ticket before she inspected the light. Defendant requested that Ficek contact a supervisor so she could get out of the car and Ficek responded, "Just give [me] the f'ing ticket back." Defendant gave Ficek the ticket back.

¶ 8 Defendant stayed in her car and tried to call her mother after Ficek used an aggressive tone when speaking to her. Ficek then told defendant to "get the 'f' out of the car" and "with no second in between," Ficek reached into the car, opened the door, and grabbed her left arm and the ponytail of her hair. Defendant testified she was scared and afraid Ficek would hurt her, so she pulled away. A second officer arrived and reached into the car and grabbed her other arm. Once the officers removed her from the car, they took her phone, pushed her against the car, and held her neck down. Defendant testified neither Ficek nor Cross ever informed her that they were placing her under arrest.

¶ 9 The trial court excused the jury and the parties argued over whether defendant satisfied her burden of presenting some evidence that she was justified in defending against the degree of force the officers applied against her. The court found Ficek escalated the application of force after defendant refused to follow Ficek's commands, and Ficek did not use greater force than necessary to effectuate defendant's arrest. As such, the court did not instruct the jury on self-

defense. The court submitted the case to the jury, and the jury found defendant guilty of resisting a peace officer.

¶ 10 The trial court conducted a sentencing hearing and heard arguments pursuant to defendant's posttrial motion. Defendant argued that the court erred in refusing to instruct the jury on self-defense. The court denied defendant's posttrial motion. The parties advised the court that they reached an agreement regarding sentencing. The State recommended that the court impose a 12-month term of conditional discharge, assess \$200 in fines and costs, and impose a condition of 100 hours of community service and/or two days' imprisonment. Defendant declined the opportunity to address the court. The court agreed with the State's recommendation and imposed the condition of community service with no jail time.

¶ 11 One month later, defendant filed an emergency motion to amend her sentence. Defendant requested that the trial court allow her to serve the two days' imprisonment instead of the 100 hours of community service. The State did not oppose the modification. The court struck the language requiring defendant complete community service and added the requirement that defendant serve 48 hours' jail time instead.

¶ 12 Defendant appeals.

¶ 13 ANALYSIS

¶ 14 Defendant argues that the trial court abused its discretion in refusing to instruct the jury on self-defense. The State argues that the court did not abuse its discretion where the evidence did not establish that Ficek used excessive force with defendant. Instructing a jury is a matter resting in the sole discretion of the trial judge. *People v. Castillo*, 188 Ill. 2d 536, 540 (1999). We will not reverse such a decision without finding an abuse of discretion. *People v. Sims*, 374 Ill. App. 3d 427, 431 (2007). A trial court abuses its discretion if it fails to instruct the jury on

the defense theory of the case if the theory has some foundation in the evidence. *People v. Cozart*, 235 Ill. App. 3d 1076, 1083 (1992).

¶ 15 An arresting officer may use any force reasonably necessary to effectuate an arrest and need not retreat in face of an arrestee's resistance. *People v. Reynolds*, 32 Ill. App. 3d 604, 607 (1975). An arrestee has no right to use force to resist an arrest by a known officer, even if the officer is effectuating an unlawful arrest. *People v. Villarreal*, 152 Ill. 2d 368, 374 (1992); *People v. Locken*, 59 Ill. 2d 459, 464 (1974); 720 ILCS 5/7-7 (West 2012). However, an exception applies where the officer uses an excessive amount of force during the arrest; such excessive force invokes the arrestee's right to defend herself. *People v. Williams*, 267 Ill. App. 3d 82, 88 (1994); 720 ILCS 5/7-1(a) (West 2012). Thus, a defendant is entitled to a self-defense instruction only where there is some evidence presented of excessive force on the part of the arresting officer. *Williams*, 267 Ill. App. 3d at 88.

¶ 16 Where there is some evidence in the record which, if found credible by the jury, would support a claim of self-defense, the court "may not weigh the evidence in deciding whether an issue has been raised entitling defendant to the instruction." *People v. Lyda*, 190 Ill. App. 3d 540, 544 (1989). "Evidence, however slight, supporting an affirmative defense entitles the defendant to an instruction [citations], even if the evidence is conflicting and the defendant's testimony is impeached." *Sims*, 374 Ill. App. 3d at 432.

¶ 17 Here, the trial court found that defendant failed to present sufficient evidence to warrant a self-defense instruction. On appeal, the State relies solely upon Ficek's testimony in arguing that no excessive force was used to effectuate defendant's arrest. However, such an argument ignores the fact that a defendant is entitled to have the jury instructed on self-defense even in the face of conflicting testimony. *Sims*, 374 Ill. App. 3d at 435; *People v. Jefferson*, 257 Ill. App. 3d

258, 265 (1993). In contrast to Ficek’s testimony that he repeatedly ordered defendant to get out of the car before he was forced to remove her, defendant testified Ficek only told her to get out of the car once. Defendant claimed that before she had time to comply, Ficek reached into her car, opened the door, and grabbed her by the arm and ponytail. Defendant testified Ficek never informed her she was under arrest, and that she was “scared” and “afraid [Ficek] would hurt her,” so she pulled away.

¶ 18 We find this evidence sufficient to satisfy the requirement that defendant present a “slight” amount of evidence supporting her claim of self-defense. Accordingly, we conclude that the court abused its discretion in refusing to instruct the jury on self-defense. In so holding, we express no opinion on the merits of defendant’s self-defense claim. We merely hold that the court erred when it weighed the evidence and found that there had been no showing of excessive force on the part of Officer Ficek. The evidence on this issue was conflicting, and such a determination was for the jury.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court of Will County is reversed and the cause is remanded for a new trial.

¶ 21 Reversed and remanded.