2016 IL App (4th) 140646-U

NO. 4-14-0646

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 11, 2016
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Woodford County
LATRELL A. CARPENTER,	)	No. 11CM39
Defendant-Appellant.	)	
	)	Honorable
	)	Charles M. Feeney, III,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the State presented sufficient evidence for the jury to find defendant obstructed a peace officer.

¶ 2 In January 2014, a jury found defendant, Latrell A. Carpenter, guilty of obstructing a peace officer (count I) (720 ILCS 5/31-1(a) (West 2010)) and unlawful possession of cannabis (count II) (720 ILCS 550/4(a) (West 2010)). In March 2014, the trial court sentenced defendant to 270 days in jail on count I and 20 days in jail on count II, to be served concurrently. In April 2014, defendant filed a *pro se* motion to reconsider the sentence and the court appointed a public defender. In June 2014, trial counsel filed a motion to reconsider the sentence, which the court denied. Defendant appeals, arguing his conviction should be reversed because (1) the State failed to prove him guilty of obstructing a peace officer beyond a reasonable doubt and (2) the charging instrument contained a fatal error. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On February 15, 2011, the State charged defendant, by information, with obstructing a peace officer (count I) (720 ILCS 5/31-1(a) (West 2010)) and unlawful possession of cannabis (count II) (720 ILCS 550/4(a) (West 2010)). As to count I, the only charge challenged in this appeal, the State alleged, on February 12, 2011, defendant knowingly obstructed Andy Yedinak, a person known to him to be a police officer engaged in the execution of his official duties, being the arrest of defendant, in that he ran from Officer Yedinak after being told to stop.

¶ 5 Officer Timothy Ricci, a police officer with the Pekin, Illinois, metropolitan enforcement group (MEG) drug unit, testified on February 12, 2011, he was assigned to a rest area located in Goodfield, Illinois, located off westbound Interstate 74. He described a ruse checkpoint where signs before the exit to the rest area indicated a drug checkpoint was ahead. He was looking for individuals coming into the rest area to remove drugs from their vehicles. At around 5:45 p.m., Deputy Painter notified Officer Ricci that she observed a male in a silver 2001 Ford pull into the rest area and it appeared he was trying to hide something or retrieve something out of the passenger side of the vehicle. As Officer Ricci approached the vehicle, he observed defendant on the passenger side of the vehicle looking for something.

¶ 6 According to Officer Ricci, he approached defendant in a well-lit area and asked him if he could speak to him, to which defendant replied he could. Officer Ricci stepped a couple feet over from the vehicle and showed defendant his badge and stated he was an officer with the MEG unit looking for individuals with drugs. Officer Ricci was wearing plain clothes and had a "long, scruffy beard." Trooper Clint Cowling, the canine handler, approached with his canine and ran a free-air sniff around the vehicle. While the canine performed a sniff around the

vehicle, Officer Ricci asked defendant where he was coming from. Defendant replied he was coming from Peoria, Illinois. Officer Ricci determined defendant was lying because he would have traveled eastbound from Peoria, not westbound. Officer Ricci observed defendant "moving around a lot, talking real fast, [and] sweating."

¶ 7 Officer Ricci and Trooper Cowling testified the canine alerted on the vehicle. Officer Ricci informed defendant the canine alerted on the vehicle and asked defendant if he had any illegal items, such as drugs or guns, on his person or in the vehicle. Defendant responded he did not believe so, and Officer Ricci requested he stand near the rear of the vehicle. When Officer Ricci opened the passenger door to the vehicle, defendant suddenly ran toward the interstate. Officer Ricci told defendant to stop and observed two other officers, in plain clothes, chasing defendant and yelling they were the police and to stop running. Officer Ricci continued his search of the vehicle in an effort to preserve evidence. He found cannabis in the cup holder between the driver and passenger seats. Once caught, defendant was returned to the rest stop and placed into a vehicle with Officer Ricci and Officer Yedinak. Officer Ricci read defendant his *Miranda* rights. *Miranda v. Arizona*, 384 U.S. 436 (1966). Defendant stated he understood his rights and agreed to answer the officers' questions. Defendant stated he was coming from Bloomington, Illinois, and he saw the sign indicating a drug checkpoint was ahead. He pulled into the rest area because he had cannabis in the vehicle. Defendant claimed he ran because he knew cannabis was in the vehicle.

¶ 8 Officer Yedinak testified he was approximately 40 yards away and observed defendant fleeing from Officer Ricci and heard Officer Ricci yelling at defendant to "stop," they were the police. Officer Yedinak began pursuing defendant and also yelled "stop" and "police." He caught defendant at the median. Defendant was facedown on the ground and would not pull

his arms from underneath him so he could be handcuffed. Officer Yedinak stated defendant was eventually placed into handcuffs. Officer Yedinak testified defendant stated he stopped at the rest area because he had seen the signs alluding to a drug checkpoint ahead.

¶ 9 Defendant testified to a different set of facts. Defendant testified on February 12, 2011, he was traveling from Bloomington to Peoria. Prior to approaching the rest area located off Interstate 74, he only observed signs stating a rest area was ahead and denied seeing any signs regarding a drug checkpoint. He stated he stopped at the rest area to find cigarettes that he believed slid off the seat onto the floor of the passenger side of the vehicle. Once he was out of the vehicle, he approached the passenger door to look for his cigarettes in what he described as a well-lit area of the rest stop.

¶ 10 Defendant further testified he was approached by a man (Officer Ricci) he described as "tall, rough, and real raggly." He stated the man approached him and asked if he could speak to him. Defendant replied yes, but he denied the man ever introduced himself as a police officer. Defendant said the man told him to put his hands on the back of the car. Defendant then took off running because he wanted to retreat to safety. Defendant claimed he was scared because the man may have been impersonating an officer and he could have been robbed. He claimed he never heard anyone yell "stop" or "police" as he was running. He also denied ever seeing the canine perform a sniff on the vehicle. Once he noticed four or five people were chasing him, he realized it was the police and laid down in the snow.

¶ 11 The jury found defendant guilty on both counts. As to count I, the jury signed a general verdict form, which states: "We, the jury, find the defendant *** guilty of obstructing a peace officer." The trial court sentenced defendant to 270 days in jail on count I and 20 days in jail on count II, to be served concurrently. Defendant filed a *pro se* motion to reconsider the

sentence and the court appointed a public defender. In June 2014, trial counsel filed a motion to reconsider the sentence, which the court denied.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 We note defendant has served the 270-day jail sentence imposed in this case. This is of no consequence, as our supreme court has previously held, "while the completion of a defendant's sentence renders moot a challenge to the sentence, it does not so render a challenge to the conviction." *People v. Campbell*, 224 Ill. 2d 80, 83, 862 N.E.2d 933, 936 (2006). On appeal, defendant argues this court should reverse his conviction because (1) the State failed to prove beyond a reasonable doubt defendant knew Officer Yedinak was a police officer and (2) the charging instrument contained a fatal error. We address each of these arguments in turn.

¶ 15 When a conviction is challenged based on insufficient evidence, the reviewing court must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime when considering all the evidence in the light most favorable to the prosecution. *People v. Brown*, 2013 IL 114196, ¶ 48, 1 N.E.3d 888. This standard of review gives the trier of fact the responsibility to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from the facts. *People v. Howery*, 178 Ill. 2d 1, 38, 687 N.E.2d 836, 854 (1997) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A conviction will be reversed when the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Wheeler*, 226 Ill. 2d 92, 115, 871 N.E.2d 728, 740 (2007).

¶ 16 A person commits the offense of obstructing a peace officer when (1) he knowingly obstructed a peace officer, (2) the officer was performing an authorized act in his

official capacity, and (3) he knew the officer was a police officer (720 ILCS 5/31-1(a) (West 2010)). Defendant only challenges the third element and argues the State failed to prove, beyond a reasonable doubt, he knew Officer Yedinak was a police officer. We disagree.

¶ 17 In the case at bar, the State presented Officer Ricci's and Officer Yedinak's testimony to show defendant knew Officer Yedinak was a police officer. Officer Ricci testified he told defendant (1) he was an officer and showed defendant his badge, (2) the canine alerted on defendant's vehicle, and (3) to stop running, he was with the police. Defendant testified he was never informed Officer Ricci was a police officer, yet at trial, he testified he ran from Officer Ricci because he believed Officer Ricci was impersonating an officer and he may have been going to rob defendant. Defendant's own testimony is inconsistent. Defendant could not have feared Officer Ricci was impersonating a police officer because he claimed he was never told by Officer Ricci he was a police officer or shown a badge and he claimed he never heard Officer Ricci yell "stop" or "police."

¶ 18 Once defendant ran from Officer Ricci, Officer Yedinak began pursuit when he heard Officer Ricci yell "stop" and "police." Officer Yedinak testified he began running after defendant and also yelled "stop" and "police." Even though the officers were in plain clothes, this testimony, viewed with the events leading to defendant's capture and the encounter with Officer Ricci and the canine, establishes defendant knew Officer Yedinak was a police officer. Viewing the evidence in the light most favorable to the prosecution, we cannot say the evidence is so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt as to defendant's guilt.

¶ 19 Nevertheless, defendant argues the charging document contains a fatal error because he was not under arrest at the time Officer Yedinak ran after him. The State argues any

variance between the act in the charging instrument and the act proved at trial is not fatal. We agree with the State. The information for count I, obstructing a peace officer, states, as follows: "defendant, knowingly obstructed Andy Yedinak, a person known to him to be a peace officer, engaged in the execution of his official duties, being the arrest of Latrell A. Carpenter, in that he ran from Andy Yedinak, after being told to stop."

¶ 20 When a charging instrument is challenged for the first time posttrial, the defendant has the burden to show he was prejudiced in preparing for his defense. *People v. Rowell*, 229 Ill. 2d 82, 93, 890 N.E.2d 487, 494 (2008). Under these circumstances, our supreme court has held a defendant is only entitled to a new trial if he can show (1) a variance existed between the allegations in an information and the proof at trial and (2) the variance was fatal to his conviction. *People v. Collins*, 214 Ill. 2d 206, 219, 824 N.E.2d 262, 269 (2005). To be fatal, a variance " 'must be material and be of such character as may mislead the accused in making his defense.' " *Id.* (quoting *People v. Davis*, 82 Ill. 2d 534, 539, 413 N.E.2d 413, 416 (1980)). However, the information must include all of the essential elements of obstructing a peace officer. *Id.*

¶ 21 The State relies on *People v. Smith*, 2013 IL App (3d) 110477, ___N.E.2d___, for the proposition that a variance in the official police act described in the charging instrument and proved at trial will not be fatal. In *Smith*, the State charged the defendant with obstructing a peace officer and alleged, "[d]efendant knowingly obstructed the performance of Jacob Reul of an authorized act within his official capacity, being the arrest of [Smith], knowing Jacob Reul to be a peace officer engaged in the execution of his official duties, in that he exited his vehicle during a traffic stop *** and refused to return to the vehicle." *Id.* ¶ 3. The defendant in *Smith* argued the evidence at trial did not establish he was under arrest at the time he exited the vehicle.

Id. ¶ 13. In applying the *Collins* decision, the Third District Appellate Court held the State did not need to prove the defendant was under arrest, it only needed to prove the elements of obstructing a peace officer. *Id.* ¶ 20.

¶ 22 Similarly, in this case, the supposed variance is the authorized act Officer Yedinak was performing when defendant allegedly obstructed him. The information states defendant obstructed his own arrest when he ran from Officer Yedinak. Defendant argues at the time Officer Yedinak began pursuit, he was not under arrest. However, it was the act of running which prevented, *i.e.*, obstructed his arrest or detention at the scene. The record indicates Officer Ricci yelled "stop" when defendant ran, indicating he was not free to leave. We need not answer the question of whether defendant was under arrest or seized when he ran from Officer Ricci. Even if defendant was merely seized, indicating a variance in the charging instrument, the variance is not fatal to his conviction. The evidence at trial presented an act the jury could have considered when it found the defendant guilty of obstructing a peace officer. We conclude this variance did not prejudice defendant in the preparation of his defense at trial.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm defendant's conviction. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 25 Affirmed.