2017 IL App (3d) 160737-U

Order filed October 6, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

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. 3-16-0737 Circuit No. 15-CM-3256
JEREMY A. RUTNICKI,	)	Honorable Edward A. Burmila, Jr.,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Carter and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to convict defendant of resisting a peace officer.

¶ 2 Defendant, Jeremy A. Rutnicki, argues that the evidence was insufficient to find him guilty of resisting a peace officer. We affirm.

¶ 3 FACTS

¶ 4 Defendant was charged with domestic battery (720 ILCS 5/12-3.2(a)(2) (West 2014)) and resisting a peace officer (720 ILCS 5/31-1(a) (West 2014)). Defendant's wife, Carrie Rutnicki,

filed an affidavit stating she did not wish to pursue domestic battery charges against defendant. A bench trial was held solely on the charge of resisting a peace officer.

¶ 5 Officer Kurt Ingram testified that he had been a patrolman for the Village of Peotone since 2007. On December 1, 2015, he received a call while he was on duty to investigate the report of a domestic battery at an apartment. Ingram spoke with Carrie outside the apartment and was able to ascertain probable cause for defendant's arrest for domestic battery. Carrie identified defendant as her husband. While standing at the doorway of the apartment, Ingram informed defendant that he needed to speak with him regarding the domestic battery. Defendant told Ingram he "wasn't fucking coming in his house." Ingram then told defendant he was under arrest for domestic battery against Carrie. Defendant backed up into the apartment, and Ingram followed. Ingram then "once again, informed [defendant] he was under arrest and told him to calm down." Defendant again "told [Ingram] to get the fuck out of his house." Ingram told defendant he was under arrest at least three times. Ingram instructed defendant to sit on the couch and calm down. Defendant sat on the couch, and Ingram "took ahold of his left wrist and tried to place him in custody." While Ingram was trying to place defendant under arrest, defendant "struggled," in that he "tensed his arm up, pulled away, and began to stand up." Ingram called for the assistance of other officers on his radio. Ingram was able to place defendant under arrest with the assistance of another officer.

¶ 6 No other evidence was presented for either party. The court found defendant guilty of resisting a peace officer. In doing so, the court stated:

> "A peace officer may arrest a person when he has reasonable grounds to believe the person is committing or has committed an offense.

> The officer has spoke[n] to the defendant's wife who related details to him about an alleged domestic incident that the officer believed resulted in probable cause to place the defendant under arrest. So he was authorized to arrest the defendant once he came to that conclusion.
>
> The second thing is the very next statute, 107-5, method of arrest:
>
> An arrest is to be made by the actual restraint of the person, and it can be [e]ffected on any day, at any time, day or night, anywhere within the jurisdiction of the State of Illinois. And all necessary and reasonable force may be used to [e]ffect the arrest.
>
> In this particular instance, the officer did have the right to use the force even though the, the defendant ordered him to leave his residence. He did not have to comply.
>
> The defendant's resistance was such that backup had to be called. And his [e]ffect—the arrest was not effected until the back-up officer arrived.
>
> The State has proven the defendant's guilt beyond a reasonable doubt, and he's guilty of the offense of resisting arrest."

¶ 7 Defendant filed a motion for a new trial, which was denied. Defendant was sentenced to 10 days in jail and 20 hours of community service.

¶ 8 ANALYSIS

¶ 9 On appeal, defendant argues that he was not proven guilty beyond a reasonable doubt of resisting a peace officer. Upon review, we find a reasonable trier of fact, viewing the evidence in the light most favorable to the State, could have found that defendant committed a physical act that impeded the performance of Officer Ingram's duties.

¶ 10 When presented with a challenge to the sufficiency of the evidence, it is not the function of the reviewing court to retry the defendant; rather, the relevant question 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. Collins*, 106 Ill. 2d 237, 261 (1985). It is the responsibility of the trier of fact to determine the credibility of witnesses, weigh the testimony, resolve conflicts in the evidence, and draw reasonable inferences from the evidence. *People v. Williams*, 193 Ill. 2d 306, 338 (2000).

¶ 11 A person commits the offense of resisting a peace officer if he or she "knowingly resists or obstructs the performance by one known to the person to be a peace officer, firefighter, or correctional institution employee of any authorized act within his or her official capacity." 720 ILCS 5/31-1(a) (West 2014). "The statute prohibits a person from committing a physical act of resistance or obstruction—a physical act that impedes, hinders, interrupts, prevents, or delays the performance of the officer's duties, such as by going limp or forcefully resisting arrest." *People v. Agnew-Downs*, 404 Ill. App. 3d 218, 226 (2010). Acts of struggling with a police officer are physical acts of resistance that will support a conviction for resisting a peace officer. *People v. Thompson*, 2012 IL App (3d) 100188, ¶ 13.

¶ 12 Here, the evidence produced at trial established that defendant knowingly resisted the attempts by Ingram to arrest him. Ingram testified that he told defendant at least three times that he was under arrest and that as he tried to place defendant in handcuffs, defendant "struggled," in that he "tensed his arm up, pulled away, and began to stand up." Because of defendant's resistance, Ingram had to call another police officer to aid in arresting defendant. Defendant's arrest was not effectuated until the backup arrived. Defendant knew that Ingram was a police officer based on his attire and the squad car he had driven. Taking the evidence in the light most

favorable to the State, the court could have found that defendant committed the offense of resisting a peace officer.

¶ 13 In coming to this conclusion, we reject defendant's reliance on *City of Pekin v. Ross*, 81 Ill. App. 3d 127 (1980). In *Ross*, two officers testified about the alleged resistance by the defendant, and their testimony was inconsistent. *Id.* at 129-30. Officer Bates testified that the defendant was struggling the whole time, but also stated that the defendant was drunk and unable to struggle much. *Id.* at 129. He also stated that the defendant struggled by swinging his arms, but then recanted and stated the resistance was against being handcuffed. *Id.* The second officer denied that the defendant swung his arms around and only stated that the defendant begged not to be arrested and tried to bring his arms to the front. *Id.* The police report did not mention any resisting or struggling. *Id.* The defendant also testified that he did not struggle, though "[h]e admitted that when his hands were brought behind his back and pushed high on his back he attempted to pull them down because of the severe pain it caused." *Id.* The defendant also testified that he suffered physical abuse at the hands of Bates, including that Bates hit him in the ribs, dragged him out of the car, threw him against the wall resulting in glass being broken and his face being bruised, and threw him against a table resulting in a laceration to his head. *Id.* at 129-30. The defendant introduced pictures of the bruises and marks he suffered at the hands of Bates. *Id.* at 130. Defendant's testimony was uncontradicted. *Id.* This court held that "[t]he testimony clearly establishe[d] a bias on the part of Officer Bates, a crucial and vital witness for the prosecution. When combined with the inconsistencies in Officer Bates' testimony and the discrepancies between the testimony of [the two officers], we believe that the municipality clearly failed to prove resistance on [the defendant's] part." *Id.*

¶ 14 The case here is nothing like *Ross*. Here, the testimony of Ingram was unrefuted. Further, any resisting in *Ross* resulted from an almost reflexive response to the force used by the arresting officer, and the officer was clearly biased against the defendant. The record does not establish any bias or inordinate force by Ingram.

¶ 15 Further, we note that defendant states, "Ingram did not make any indication that he would now be arresting [defendant] before reaching out and grabbing [defendant's] arm." Defendant then states that, because he did not know that Ingram was arresting him at that point, he "acted reflexively at that point tensing up and pulling away." The evidence shows that Ingram told defendant he was under arrest at least three times before trying to handcuff him. Any allegation that defendant acted reflexively because he did not know he was being arrested is disingenuous.

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Will County is affirmed.

¶ 18 Affirmed.