2018 IL App (1st) 153328-U

No. 1-15-3328

Order filed August 17, 2018

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 8958
	)	
CHARLES DAVIS,	)	Honorable
	)	Thomas J. Byrne,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for resisting or obstructing a peace officer is reversed because the State failed to prove beyond a reasonable doubt that, at the time defendant resisted, the officer was engaged in an authorized act where the evidence presented did not establish that the officers had reasonable articulable suspicion to justify a stop under *Terry v. Ohio*, 392 U.S. 1 (1968).

¶ 2 Following a bench trial, defendant, Charles Davis was convicted of resisting or obstructing a peace officer (720 ILCS 5/31-1(a-7) (West 2014)), and sentenced to 30 months' imprisonment. On appeal, defendant contends that his conviction must be vacated because the

evidence was insufficient to prove beyond a reasonable doubt that: (1) the officer was engaged in an authorized act at the time defendant resisted; and (2) he was the proximate cause of the officer's injuries. For the following reasons, we reverse.

¶ 3 Defendant was charged by information with aggravated battery and resisting or obstructing a peace officer, Debra Anderson. As relevant here, count 2 of the information charged defendant with resisting or obstructing a peace officer in that he "knowingly resisted the performance of Officer Debra Anderson Star 3947, one known to defendant to be a peace officer of any authorized act within her official capacity and was the proximate cause of an injury to said peace officer." Defendant waived his right to a jury trial and the case proceeded to a bench trial.

¶ 4 The facts adduced at trial showed that, on May 9, 2014, about 4:13 p.m., Chicago police officer Jacqueline Bradford was the "safe passage officer" for Dulles School located at 325 East 63rd Street. Officer Bradford was in uniform and driving a "marked" Chicago police sports utility vehicle (SUV). Bradford testified she had a conversation with the Dulles school officer, who provided her with a description of a black male in all black clothing walking westbound on 63rd Street. Bradford saw defendant fitting the description and asked him for identification. Defendant initially could not provide Bradford with identification. Bradford asked defendant to put his hands on the hood of the SUV and noticed that he was "incoherent at times." Bradford removed papers, loose cigarettes, a lighter and cell phone from defendant's pockets and placed the objects on the hood of the SUV. She then radioed for assistance.

¶ 5 Sergeant Murphy arrived on the scene, followed by Officer Anderson and her partner Officer Angus. When the assisting officers arrived, Bradford entered her vehicle and started

preparing "paperwork." Defendant still had his hands on the hood. When Bradford looked up, Anderson was on the ground, and Murphy and Angus were trying to restrain defendant, who kept "stiffening" his arms. The officers were eventually able to gain control of defendant and place him in handcuffs.

¶ 6 On cross-examination, Bradford acknowledged that defendant did not attempt to run when she first approached him. Bradford admitted that she did not receive information from the school officer that defendant was armed and she did not find a gun when she searched defendant. Bradford arrested defendant for battery to Anderson.

¶ 7 Officer Anderson testified that on May 9, 2014, she was a "safe passage officer." Anderson was working with her partner and was in "plain clothes," but was wearing a "vest, star, identification, and duty belt." She testified the vest had the word "police" on the front. At approximately 4:13 p.m., Anderson monitored a call from Sergeant Murphy, who requested assitance at Dulles School. When she arrived at the school, Anderson saw defendant with his hands on the hood of Bradford's SUV. As Anderson approached, the wind blew defendant's belongings off the hood of the SUV and defendant shouted "my squares, my papers." Anderson told defendant she would get them for him and picked them up and placed them in his hat. Defendant started to reach for his cell phone, and Anderson placed her hand on the phone and told him to "hold off on the cell phone." Defendant put his hand on top of Anderson's hand and twisted her arm forcing her to bend at the waist. Defendant told Anderson "no female is gonna search me." Anderson saw that defendant's other hand was drawn back and clenched in a fist. Anderson raised her body up and punched defendant in the cheekbone with her right hand. After a brief struggle, defendant released Anderson's arm and he was placed under arrest.

¶ 8 Shortly after the incident, Anderson felt pain in the hand she used to hit defendant. Anderson was taken to the University of Chicago hospital where she was given pain medication and doctors attempted to set her hand. Anderson ultimately had two surgeries and four pins placed in her hand. She developed "chronic repetitive pain syndrome" and was not able to return to work for about nine months. The State rested.

¶ 9 Defendant's motion for directed finding was denied. After closing arguments, the court found defendant not guilty of aggravated battery, but guilty of the resisting a peace officer charge. In announcing its ruling, the court found the testimony of Officers Bradford and Anderson to be credible. The court noted that the officers "gained information that there was something about [defendant] that needed to be further investigated, and they reasonably went about their job and stopped defendant but he became agitated by the detention, by being told what to do by a police officer, maybe even because the officer was female, but what happened was the defendant overreacted." The court found that Officer Anderson was acting as a peace officer, lawfully performing her duties, and the defendant's actions were the proximate cause of the injury to her hand.

¶ 10 After listening to factors in aggravation and mitigation, the court sentenced defendant to 30 months' imprisonment. Defendant filed a motion to reconsider sentence, which was denied.

¶ 11 On appeal, defendant challenges the sufficiency of the evidence to sustain his 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. Wheeler*, 226 Ill. 2d 92, 114 (2007). This standard is applicable in all criminal cases regardless of whether the

evidence is direct or circumstantial. *People v. Herring*, 324 Ill. App. 3d 458, 460 (2001); *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Hutchinson*, 2013 IL App (1st) 102332 ¶ 27; *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). When considering the sufficiency of the evidence, it is not the reviewing court's duty to retry the defendant. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). A reviewing court will only reverse a criminal conviction when the evidence is so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8; *People v. Collins*, 214 Ill. 2d 206, 217 (2005).

¶ 12 In this case, defendant was found guilty of resisting or obstructing a peace officer. 720 ILCS 5/31-1(a-7) (West 2014). To sustain defendant's conviction for that offense the State was required to prove beyond a reasonable doubt that: (1) defendant knowingly resisted or obstructed a peace officer; (2) the officer was performing an authorized act in her official capacity; and (3) defendant knew she was a peace officer. *People v. Baskerville*, 2012 IL 111056, ¶ 32; 720 ILCS 5/31-1(a-7) (West 2014). "Proof of proximate cause of injury elevates the conviction from a Class A misdemeanor to a Class 4 felony." *People v. Jenkins*, 2016 IL App (1st) 133656, ¶ 27.

¶ 13 Defendant does not argue that the evidence was insufficient as to the first and third elements. Rather, he argues that the evidence presented at trial was insufficient to establish the second element—that, at the time he resisted, the officers were performing an authorized act. Specifically, defendant contends that the evidence presented was insufficient to establish that

Officer Bradford had reasonable suspicion to justify the stop under *Terry v. Ohio*, 392 U.S. 1 (1968) and, thus, the stop was unauthorized. We agree.

¶ 14 The State responds that defendant has forfeited this issue by failing to challenge his stop and pat-down search at trial. In support of this argument, the State cites to *People v. Hughes*, 2015 IL 117242, ¶ 38, and argues that defendant's failure to argue the legality of the stop caused the State to refrain from presenting available pertinent rebuttal evidence which could have had a positive bearing on the disposition of the case in both the trial and this court. The State maintains that because defendant "affirmatively chose" not to challenge his stop at trial he cannot not now avail himself of this argument under the guise of a challenge to the sufficiency of the evidence to sustain his conviction. We disagree.

¶ 15 The State's forfeiture argument overlooks the fact that the question of whether the officers were engaged in an "authorized act" is an express element of the offense of resisting or obstructing a peace officer. Due process requires that the State bear the burden of proving beyond a reasonable doubt all of the elements of the charged offense. *People v. Howery*, 178 Ill. 2d 1, 32 (1997). In this case, that includes establishing that the officers were engaged in an authorized act. *Baskerville*, 2012 IL 111056, ¶ 32. The defendant is presumed innocent and, thus, need not have to prove his innocence at trial, testify, or present any evidence. *People v. Cameron*, 2012 IL App (3rd) 110020, ¶ 27. As such, defendant was not required to argue the legality of the stop in the trial court in order to preserve for review the issue of whether the State met its burden of proving all of the elements of the charged offense. See *People v. Woods*, 214 Ill. 2d 456, 470 (2005) (where a challenge is made to the sufficiency of the evidence defendant's claim is not subject to the waiver rule and may be raised for the first time on direct appeal).

Accordingly, we will consider defendant's argument that Officer Bradford was not engaged in an authorized act at the time she stopped and searched him.

¶ 16 The United States and Illinois Constitutions guarantee citizens the right against unreasonable searches and seizures. U.S. Const., amends. IV, XIV; Ill. Const. 1970, art I, § 6. "Reasonableness under the fourth amendment generally requires a warrant supported by probable cause." *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 12. However, our supreme court has recognized three types of police-citizen encounters that do not constitute an unreasonable seizure: (1) arrests, which must be supported by probable cause; (2) a brief investigative stop, also known as a *Terry* stop; and (3) consensual encounters that do not involve coercion or detention and therefore do not implicate fourth amendment interests. *People v. Luedemann*, 222 Ill. 2d 530, 544 (2006).

¶ 17 We agree with the parties that the encounter in this case is best characterized as a *Terry* stop, during which defendant was subject to a search. In reaching this conclusion, we first note that Bradford was not effecting an arrest of defendant when she initially stopped and searched him. Rather, Bradford testified that she subsequently arrested defendant for battery to Anderson. This distinction is important because, although a defendant may not resist an arrest even if it is unlawful (See 720 ILCS 5/7-7 (West 2014)), that statute does not apply where police are not effectuating an arrest, such as in the event of an unjustified *Terry* stop. See *People v. Shipp*, 2015 IL App (2d) 130587 (2015), ¶ 49 (citing *City of Champaign v. Torres*, 214 Ill. 2d 234, 243 (2005)); *People v. Moore*, 286 Ill. App. 3d 649, 654 (1997).

¶ 18 Second, the evidence presented shows that the encounter was not consensual. The law is clear that in consensual encounters the individual must agree and consent to the encounter. Our

supreme court in *Luedemann* held that an officer does not violate the fourth amendment merely by approaching a person in public to ask questions if the person is willing to listen. *Luedemann*, 222 Ill. 2d at 549. This was not the circumstance with defendant where Bradford did more than merely ask questions. The record shows that Bradford stopped defendant, had him place his hands on the hood of her police SUV and searched his pockets.

¶ 19 Finally, this encounter was not within the community caretaking exception, which is analytically distinct from consensual encounters and applies only when the officer is engaged in "community caretaking" functions, *i.e.*, responding to heart attack victims, helping children find their parents, helping inebriates find their way home, responding to calls about missing persons and sick neighbors, or mediating noise disputes. See *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973); *Luedemann*, 222 Ill. 2d at 545-46. In order to determine that a seizure is justified as community caretaking, a court must find two general criteria: (1) the officers were performing some function other than investigation of a crime; and (2) the search or seizure must be reasonable because it was undertaken to protect the safety of the general public. *People v. McDonough*, 239 Ill. 2d 260, 272 (2010). Here, the record is silent as to what community caretaking function Bradford may have been performing at the time she encountered defendant or whether the seizure was reasonable to protect the safety of the public.

¶ 20 Accordingly, the facts of this case leave only a *Terry* stop as a possible basis to authorize Bradford to stop defendant. Therefore, we consider whether the evidence presented was sufficient to establish that Bradford was justified in performing the *Terry* stop and, thus, was performing an authorized act. After viewing the evidence in the light most favorable to the State,

we find the evidence presented insufficient to establish that Bradford had articulable suspicion necessary to authorize the *Terry* stop.

¶ 21 In *Terry*, the United States Supreme Court held that "an officer may, within the parameters of the fourth amendment, conduct a brief, investigatory stop of a citizen when the officer has a reasonable, articulable suspicion of criminal activity, and such suspicion amounts to more than a mere 'hunch." *Terry*, 392 U.S. at 27. During a *Terry* stop, an officer may temporarily detain an individual for questioning where the officer reasonably believes the individual has committed, or is about to commit, a crime. *Terry*, 392 U.S. at 21-22; *Sanders*, 2013 IL App (1st) 102696, ¶ 13. The *Terry* standard has been codified in section 107-14 of the Code of Criminal Procedure of 1963. 725 ILCS 5/107-14 (West 2014). "Whether an investigatory stop is valid is a separate question from whether a search for weapons is valid." *People v. Thomas*, 198 Ill. 2d 103, 109 (2001).

¶ 22 Under *Terry*, the conduct constituting the stop must have been justified at its inception. *People v. Thomas*, 198 Ill. 2d 103, 109 (2001). “A court objectively considers whether, based on the facts available to the police officer, the police action was appropriate.” *Id.* To justify a *Terry* stop, officers must be able to point to specific and articulable facts which, considered with the rational inferences from those facts, make the intrusion reasonable. *Terry*, 392 U.S. at 21. The Supreme Court has defined “reasonable suspicion” as “ ‘a particularized and objective basis’ for suspecting the person stopped of criminal activity.” *Ornelas v. United States*, 517 U.S. 690, 696 (1996) (quoting *United Stated v. Cortez*, 449 U.S. 411, 417-18 (1981)). Although reasonable suspicion is a less stringent standard than probable cause, an officer's hunch or unparticularized suspicion is insufficient. *People v. Lampitok*, 207 Ill. 2d 231, 255 (2003). When determining

whether an investigatory stop is reasonable, we rely on an objective standard and view the facts from the perspective of a reasonable officer at the time of the stop. *Sanders*, 2013 IL App (1st) 102696, ¶ 14.

¶ 23 Here, the record shows that Officer Bradford did not meet the requirements for a *Terry* stop. Bradford did not testify that she had any reasonable articulable suspicion that defendant was committing, was about to commit, or had just committed a crime. We initially note that the State, in its brief, repeatedly argues that Bradford stopped defendant because she received information that he was speaking inappropriately to school children. However, as pointed out by defendant, and a careful review of the record shows, this was not the evidence presented at trial. Rather, Bradford testified that she spoke to the school's safety officer. When the State tried to elicit the substance of that conversation, defense counsel objected and the trial court sustained the objection. Bradford testified that the safety officer provided her with a description of a black male in all black clothing walking westbound on 63rd Street. Based on that conversation, Bradford stopped defendant near the school because he fit the description. This information regarding defendant's description and direction of travel does not amount to "a particularized and objective basis for suspecting the person stopped of criminal activity." *Ornelas*, 517 U.S. at 696. In short, Bradford did not provide sufficient articulable facts for why she stopped defendant so as to justify the *Terry* stop and establish that she was engaged in an authorized act, as required to support defendant's conviction for obstructing a peace officer.

¶ 24 Given that the evidence was insufficient to establish that the officers were engaged in any authorized activity, we need not address defendant's remaining argument regarding whether he was the proximate cause of Officer Anderson's injuries.

¶ 25 For the reasons stated, we reverse the judgment of the circuit court of Cook County.

¶ 26 Reversed.