2018 IL App (1st) 153561-U

No. 1-15-3561

Order filed September 18, 2018.

Second 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. 15 MC1 223806
	)	
RESON STANTON,	)	The Honorable
	)	Clarence L. Burch,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction over his contention that the evidence was insufficient to prove him guilty beyond a reasonable doubt of resisting a peace officer. Defendant did not receive ineffective assistance of counsel for counsel's failure to impeach a witness at trial.

¶ 2 Following a bench trial, defendant Reson Stanton was found guilty of resisting or obstructing a peace officer or correctional institution employee (720 ILCS 5/31-1(a) (West 2014)) and sentenced to 30 days in the Cook County Department of Corrections (CCDOC). On

appeal, he argues the evidence was insufficient to prove him guilty beyond a reasonable doubt where the State failed to prove the victim was a peace officer or correctional officer engaged in an authorized act. He further asserts he received ineffective assistance of counsel where trial counsel failed to impeach a witness. We affirm.

¶ 3 Defendant was charged with two counts of resisting or obstructing a peace officer or correctional institution employee and one count of assault stemming from acts occurring on September 4, 2015, in Chicago. With respect to the resisting or obstructing a peace officer or correctional institution employee charge, the complaints stated defendant "knowingly resisted the performance of an authorized act within the officer's official capacity and engagement in the execution of his/her official duties, in that the defendant did, (pulled away, stiffened body, used body to push off officers) in an attempt to defeat an arrest for a violation of 720 ILCS."

¶ 4 At trial, Parole Agent Thompson testified that she worked for the Illinois Department of Corrections (IDOC) at a parole office in Chicago. Thompson's duties involved checking in parolees, informing them of their parole board orders, and monitoring or seeing them every 30 days. Additionally, she would go to parolees' homes to do property searches in order to verify that they lived there, but some parolees would come to the office for conferences with the commander, or other reasons.

¶ 5 On September 4, 2015, Thompson was working at the parole office. Defendant, a parolee on electronic monitoring, had previously been notified to come to the office. Around 2:15 p.m., defendant arrived to discuss an issue regarding his job and his movement while on electronic monitoring. He informed Thompson that he did not want to speak with her despite the fact she was his parole agent. Defendant told Thompson he wanted to speak to a commander, so

Thompson went to Commander Victoria Pork. Defendant was in a small hallway off the front door and had to be handcuffed before he could proceed further. When Pork attempted to handcuff him, defendant "was jerking away so no one [could] touch him" and other parole agents had to "physically put him in the office, because he refused to go." Thompson explained, under questioning from the court, that "[a]ny time you enter the parole office, you have to be placed in handcuffs in order to proceed to the back of the office." As defendant was being taken into the back of the parole office to talk about his movement on electronic monitoring, he was required to be handcuffed. Chicago police officers later arrived, switched the handcuffs on defendant to their own, and placed defendant into a squad car.

¶ 6 Commander Pork testified that Thompson told her defendant was "giving her problems." Pork checked defendant's background and went to talk to him inside the "inner lock" between the outer door and the door to the parole office itself. She identified herself to defendant and explained she was there to help defendant get a better understanding of his electronic monitoring. Defendant was initially calm but would not talk to Pork. Defendant demanded to know what right Thompson had to change his movement. Pork asked defendant to sit down and explained that there was not much that could be done about his electronic monitoring. Defendant stood up and demanded to know why Thompson was trying to make him lose his job. Pork told defendant to sit down again and defendant complied. After speaking a little longer, defendant jumped up again. Pork ordered defendant to turn around to be handcuffed in order to enter the parole office. Defendant had to be handcuffed because any time a parolee enters the parole office, the parolee is required to be handcuffed and searched.

¶ 7 Defendant stood up and began to put his hands behind his back but suddenly turned to face Pork so he could not be handcuffed. Defendant would not comply and began moving his shoulders back and forth and jerking away. Pork was able to handcuff one of defendant's hands and, eventually, the other hand. A male parole agent assisted to pat down and search defendant, but defendant continued to be "combative." Defendant told the agents, "you fucking with the wrong guy," and that he was going to "fuck [them] up." Pork told agents to take defendant to the holding area.

¶ 8 Defendant refused to walk to the holding area and "was pushing back, leaning" and "moving all over the place, but not walking in the direction that he was being escorted." Defendant was in Pork's face and said, " '[y]ou don't know who I am. Like, I got you. I'm going to get your ass.' " At this point, there were five male agents trying to get defendant into the holding area and defendant was refusing to go. Pork thought defendant was angry, and she "was more concerned with getting him secured and getting [her] staff safe."

¶ 9 The trial court granted defendant's motion for a directed finding as to assault and found defendant guilty of one count of resisting or obstructing a peace officer. It sentenced defendant to 30 days in the CCDOC, "time considered served, actually served." After defendant's written motion to reconsider the finding of guilt and for a new trial was denied, defendant filed a timely notice of appeal.

¶ 10 Defendant argues the State failed to prove him guilty beyond a reasonable doubt where the parole agents who interacted with him were not "peace officers" or "correctional institution employees" as defined by the statute and were not engaged in an authorized act when defendant

resisted them. He further asserts he received ineffective assistance of counsel where trial counsel failed to impeach Thompson's trial testimony with her prior sworn statements in the complaints.

¶ 11 When considering a challenge to the sufficiency of the evidence, the standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. In a bench trial, the trial judge, as the trier of fact, is tasked with determining the credibility of witnesses, weighing the evidence and any inferences derived therefrom, and resolving any conflicts in the evidence. *People v. Brown*, 2017 IL App (1st) 142877, ¶ 39. A conviction will not be overturned unless the evidence is so improbable, unsatisfactory, or inconclusive that a reasonable doubt of defendant's guilt exists. *People v. Belknap*, 2014 IL 117094, ¶ 67.

¶ 12 In order to sustain the conviction for resisting a peace officer or correctional institution employee, the State had to prove the following essential elements: (1) defendant knowingly resisted the performance (2) by someone he knew to be a peace officer or correctional institution employee, (3) of any authorized act within his or her official capacity. 720 ILCS 5/31-1(a) (West 2012); see also *Baskerville*, 2012 IL 111056, ¶ 32.

¶ 13 Defendant does not challenge the proof of the first element, that he knowingly resisted the performance of the parole agents. Rather, he argues that Thompson and Pork cannot be deemed "peace officers" or "correctional institution employees" under the statute and they were not performing an authorized act within their official capacity when he resisted. The State asserts that Thompson and Pork are "peace officers" as defined by the statute and were engaged on an authorized act in their official capacity when attempting to handcuff defendant.

¶ 14 To determine whether Thompson and Pork are peace officers, we must examine the statutory language to determine the meaning of "peace officer." In cases involving statutory interpretation, the intent of the legislature is given primary concern. *In re Shelby R.*, 2013 IL 114994, ¶ 32. Courts analyze the statute in its entirety, providing the statutory language its plain and ordinary meaning. *People v. Beachem,* 229 Ill. 2d 237, 243 (2008).

¶ 15 Section 2-13 of the Criminal Code of 2012 (Code) defines a "peace officer" as,

> "(i) any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or (ii) any person who, by statute, is granted and authorized to exercise powers similar to those conferred upon any peace officer employed by a law enforcement agency of this State." 720 ILCS 5/2-13 (West 2014).

Additionally, section 3-2-2(1)(i) of the Unified Code of Corrections provides, in part, that,

> "Personnel assigned by the Department to be responsible for the custody and control of committed persons or to investigate the alleged misconduct of committed persons or employees or alleged violations of a parolee's or releasee's conditions of parole shall be conservators of the peace for those purposes, and shall have the full power of peace officers outside the facilities of the Department in the protection, arrest, retaking and reconfining of committed persons or where the exercise of such power is necessary to the investigation of such misconduct or violations." 730 ILCS 5/3-2-2(1)(i) (West 2014).

¶ 16 We find that Pork and Thompson were peace officers as defined by the statute. Pork testified she was employed by the IDOC as a parole commander and was Thompson's supervisor. Thompson explained that her parole agent duties involved checking in parolees,

informing them of their parole board orders, and monitoring or "seeing" them every 30 days, which generally involved going to where they lived. An agent may request a parolee to come to the office for a conference with the commander. "A person on parole remains subject to the sentence of commitment to the Department of Corrections for the period of time specified by the court. Parole alters only the method and degree of confinement during the period of commitment." See *People v. Williams*, 66 Ill. 2d 179, 187 (1977). Further, "[t]he Department of Corrections retains custody of all individuals on [Mandatory Supervised Release], and those individuals may be taken into custody for violation of the conditions of their release." See *People v. Lashley*, 2016 IL App (1st) 133401, ¶ 34.

¶ 17 Pork and Thompson were speaking to defendant, a parolee, about the terms of his electronic monitoring, which necessarily goes to the "custody and control" of defendant, a "committed person." See *Williams*, 66 Ill. 2d at 187; *Lashley*, 2016 IL App (1st) 133401, ¶ 34. Accordingly, based on the testimony, Pork and Thompson were clearly "responsible for the custody and control of committed persons," parolees, and therefore considered a "conservator[] of the peace for those purposes." 730 ILCS 5/3-2-2(1)(i) (West 2014). Moreover, the statute accorded the parole agents full power of peace officers to make arrests outside the facilities of the Department of Corrections or where the exercise of that power is necessary. *Id.* Thus, they meet the definition of peace officer in the criminal code, as by virtue of their office or employment, they are vested by law with the duty to make arrests, albeit only for offenses related to enforcement of parole conditions. See 720 ILCS 5/2-13 (West 2014) (peace officers' duty to arrest can be "limited to specific offenses"). Per Thompson and Pork's testimony and their duties involving the custody and control of parolees, they were "peace officers" as defined by the

statute. Having reached this determination, we need not address defendant's alternative argument that Thompson and Pork were not "correctional institution employees" as defined by the statute.

¶ 18 We further find that, viewing the evidence in the light most favorable to the State, Pork was performing an authorized act within her official capacity when defendant resisted her. The evidence showed that it was the policy of the parole office that, before a parolee may enter beyond the vestibule of the parole office, the parolee must be handcuffed and searched. Here, Pork was involved in an authorized act, *i.e.*, handcuffing and escorting defendant to the back of the office in order to speak with him, at his request, regarding his electronic monitoring, when defendant physically resisted her efforts. Viewing the evidence in the light most favorable to the State, we cannot conclude no rational trier of fact could have found defendant guilty beyond a reasonable doubt of resisting a peace officer in her performance of an authorized act.

¶ 19 Defendant additionally asserts the State failed to prove that the authorized act that he resisted was his arrest, which is contrary to the charging documents alleging defendant resisted "in an attempt to defeat an arrest for a violation of 720 ILCS." To the extent defendant is arguing that a variance between the proof at trial and the complaint is fatal to his conviction (see *People v. Collins*, 214 Ill. 2d 206, 219 (2005)), we reject his contention. In order to receive a new trial, a defendant must show that both (1) a variance exists between allegations contained in the complaint and the proof adduced at trial and (2) that variance is fatal to his conviction. *People v. Smith*, 2013 IL App (3d) 110477, ¶ 14; *Collins*, 214 Ill. 2d at 219. Defendant fails to develop his variance argument beyond asserting the evidence did not show he was being arrested and does not support his contention with relevant case law. Accordingly, defendant has forfeited this contention. See *People v. Oglesby*, 2016 IL App (1st) 141477, ¶ 249.

¶ 20 Even if we consider the issue, the variance is not fatal here. A variance is fatal to a conviction if the variance is material and could mislead the defendant in making his defense. See *People v. Smith*, 2013 IL App (3d) 110477, ¶ 14. We agree the evidence did not show defendant was resisting arrest by the parole agents. However, the State did not need to establish that defendant was under arrest to secure a conviction for resisting a peace officer, only that the peace officer was performing an authorized act. Even if the language regarding his arrest is removed from the complaints, the complaints are still sufficient to charge the essential elements of the offenses. Therefore, any language regarding defendant's arrest is surplusage. See *id.* ¶¶ 20-21; *Collins*, 214 Ill. 2d at 219-20.

¶ 21 Defendant next argues he received ineffective assistance of counsel where trial counsel failed to impeach Thompson's trial testimony with her sworn statement in the misdemeanor complaint for resisting a peace officer. Specifically, defendant asserts that Thompson's sworn statement that defendant's resistance occurred in an attempt to defeat an arrest contradicts her testimony that defendant's resistance occurred when he was being handcuffed and escorted to the back of the office.

¶ 22 In order to establish ineffective assistance of counsel, the defendant must establish both that (1) trial counsel's representation was deficient and (2) that deficiency prejudiced the defendant. *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010) (citing *Strickland v. Washington*, 466 U.S. 668, 694 (1984)). To establish deficient performance, a defendant must show counsel's performance fell below an objective standard of reasonableness. *People v. Edwards*, 195 Ill. 2d 142, 163 (2001). With respect to prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have

been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. A defendant must establish both prongs set forth in Strickland in order to prevail on his ineffective assistance of counsel claim. See *People v. Colon*, 225 Ill. 2d 125, 135 (2007).

¶ 23 There exists a strong presumption that defense counsel's conduct "fell into a wide range of reasonable representation, and the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *People v. Cloutier*, 191 Ill. 2d 392, 402 (2000). "Generally, the decision whether or not to cross-examine or impeach a witness is a matter of trial strategy which cannot support a claim of ineffective assistance of counsel." *People v. Smith*, 177 Ill. 2d 53, 92 (1997).

¶ 24 Viewing the record, we find that counsel's choice not to impeach Thompson with her sworn statement in the misdemeanor complaint was trial strategy and therefore did not constitute deficient performance. Defense counsel could have reasonably determined that impeaching Thompson with her sworn complaint that defendant resisted an arrest would have either been inconsequential or potentially damaging. As discussed, the State had to prove defendant resisted the performance of an authorized act and did not have to prove he resisted an arrest. Pork's testimony alone was sufficient to show that she was involved in an authorized act, *i.e.*, handcuffing and escorting defendant to the back of the office in order to speak with him regarding his electronic monitoring, when the resistance occurred. Thompson's evidence to that effect was corroborating. Impeaching her would not have negated Pork's testimony and could, in fact, have elicited testimony supporting that the parole agents were performing an authorized act. Therefore, defense counsel's failure to impeach Thompson with her sworn statement was not

objectively unreasonable such that we may find ineffective assistance of counsel. See *Colon*, 225 Ill. 2d at 135.

¶ 25 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.