2013 IL App (1st) 111903-U

FOURTH DIVISION
June 6, 2013

No. 1-11-1903

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 MC6 4819
	)	
QUINCY UKAIGWE,	)	Honorable
	)	Allen F. Murphy,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Epstein concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's conviction of resisting a peace officer affirmed over challenge to the sufficiency of the evidence; issue regarding court's allowance of certain jury instructions forfeited.

¶ 2 Following a jury trial, defendant Quincy Ukaigwe was found guilty of resisting a peace officer and sentenced to two years' conditional discharge. On appeal, he contends that he was not proved guilty beyond a reasonable doubt where the officer's testimony was uncorroborated, contradicted, and unbelievable. He also contends that it was plain error to give two affirmative

defense jury instructions because he did not raise any affirmative defenses and the instructions implied that he knowingly resisted an individual he knew to be a peace officer.

¶ 3 The record shows that defendant was charged with resisting a peace officer and knowingly obstructing a peace officer in the performance of his duties. These charges arose from an incident at a gas station in Markham, Illinois, during the early evening hours of April 7, 2010.

¶ 4 At trial, Markham police officer Newman testified that about 5:45 p.m. that evening, he and his partner Officer Brazil were on aggressive patrol to suppress narcotics and burglary offenses. They were riding in an unmarked squad car which had tinted windows and blue and red lights on the inside of the rear view mirror and the rear windows. Officer Newman was wearing plain clothes and a police utility vest with a bullet proof vest on the inside that stuck out from his body. The vest also held his handcuffs and a flashlight case on the side, and his police badge, which was on the "center mass of [his] chest," was in "plain view," from his open jacket.

¶ 5 At the aforementioned time, Officer Newman and his partner drove to the Citgo gas station on the northeast corner of 159th Street and Turner Avenue and observed defendant parked illegally in front of the station with his vehicle facing westbound across three parking spaces. This blocked the officers' view of the cashiers in the gas station, and prevented them from ensuring that the employees were safe inside.

¶ 6 The officers waited five minutes to give defendant a chance to move his vehicle, and when he did not, they turned on the emergency lights in their car, and approached the vehicle. As he did so, Officer Newman noted that his jacket was open and behind his arms so that his firearm, extra ammunition, and flashlight were within reach, and his badge was at defendant's eye level. Officer Newman told defendant that he was a police officer, and ordered him to produce his identification. Defendant refused to do so, after multiple requests, and also failed to comply with his order to step out of the vehicle.

¶ 7 Officer Newman further testified that he felt unsafe at this time because defendant's right hand was out of view and he could have had a weapon. When he attempted to unlock the driver's side door by reaching for the door lock, defendant pushed his hand away and attempted to raise the window. The officer then pulled the lock up, opened the door, and removed defendant from the car. Meanwhile, Abayomi Adekahunsi exited the Citgo station and entered the passenger side of defendant's vehicle. Officer Brazil ordered Adekahunsi to get out and he complied with that order.

¶ 8 Officer Newman also testified that he told defendant he was being placed under arrest for obstructing a peace officer, and defendant responded that he did not do anything to him. As Officer Newman attempted to place defendant's left hand behind his back, defendant tried to remove his hands and arms from the officer's grasp. During the struggle that ensued, the officer repeatedly told defendant to stop resisting and place his hands behind his back. Officer Newman eventually handcuffed defendant and took him into custody, and also issued him a citation for parking illegally.

¶ 9 Officer Newman acknowledged that he did not include in his police report that he activated the emergency lights in his unmarked squad car before approaching defendant, or that he identified himself as a police officer to defendant. He explained that his police report is a summary of the incident and does not include every detail, and that he indicated on the report that it was a summary of the events that had occurred.

¶ 10 Abayomi Adekahunsi testified that he had known defendant for a year and a half in college, and on the night in question, he and defendant were about to leave the Citgo gas station when "two cops -- well, not cops, but two people came, and they asked us for -- they didn't ask for anything." These men were dressed in black, and there was no squad car nearby with its

lights activated. The two men approached the car on opposite sides, knocked on the windows and told them to get out, but did not identify themselves as police officers.

¶ 11 Adekahunsi rolled down his window to talk to the man who approached his side of the car. He noted that he was wearing a golden badge, but there were no markings on his shirt indicating that he was a police officer. Adekahunsi acknowledged, however, that he knew that people wearing badges are police officers, but then stated that at the time in question, he did not know that the man who approached him was a police officer. Adekahunsi also testified that he did not see a badge on the man who approached defendant.

¶ 12 Defendant testified that he was with his friend Adekahunsi at the Citgo gas station parked properly in one parking space. After reversing the vehicle to leave the station, two men dressed in black approached the vehicle, and there was no car in the station with emergency lights on. Defendant also testified that this area was dangerous, and that he was in "shock" when the two men approached his car. Officer Newman, who had a gun visible on the right side of his waist, grabbed defendant's door handle, and when it did not open, he began knocking on the window. Officer Newman did not identify himself as an officer, and the men did not have any markings on them indicating that they were police officers.

¶ 13 Defendant further testified that he was frightened, but rolled down his window a little to "see what was the situation." Officer Newman then reached inside his vehicle to unlock the door, but did not inform him that he was a police officer. Defendant believed the men were armed robbers, and his initial reaction was to open the door and exit willingly to "make the best of the situation at that time." The officer did not ask him for identification, but pulled him out of the vehicle, and slammed him on top of it. Defendant put his hands up in the air because he thought he was being robbed, but the man then forced his hands behind his back. Once he was placed in handcuffs, he "automatically assumed" that the man was a police officer. Officer Newman,

however, never identified himself as a police officer to defendant or told him that he was under arrest. Defendant further testified that he did not struggle with the officer.

¶ 14 The parties then had a jury instruction conference. The State requested, in relevant part, Illinois Pattern Jury Instruction, Criminal, (IPI) No. 24-25.12 (4th ed. 2000), which provides that a peace officer need not retreat or desist his efforts to make a lawful arrest because of resistance or threatened resistance to the arrest, and is justified in using any force which he believes necessary to effect the arrest or defend himself from bodily harm. Defense counsel objected to this instruction maintaining that there was no threat to the police officer. The court responded that it would give the instruction because it was "in the disjunctive," and an accurate statement of the law in Illinois. The State also requested IPI No. 24-25.20 (4th ed. 2000), which provides that a person is not authorized to use force to resist an arrest which he knows is being made by a peace officer even if he believes that the arrest is unlawful and the arrest is unlawful. Counsel indicated that he had no objection to this instruction.

¶ 15 During jury deliberations, the jury asked the court, what part of the incident was resistance. The court noted that the question was fact sensitive and instructed the jury, with the agreement of the parties, that they had heard the evidence in this case, and to continue their deliberations.

¶ 16 The jury subsequently found defendant guilty of resisting a peace officer, but not guilty of obstructing a peace officer. In this appeal from that judgment, defendant first contends that he was not proved guilty beyond a reasonable doubt because Officer Newman's testimony was uncorroborated, contradicted by two defense witnesses, and unbelievable. He maintains that his corroborated testimony and undisputed evidence created a substantial doubt that he knew Officer Newman was a police officer at the time of the incident, and that his belief that the officers were armed robbers was reasonable.

¶ 17 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the reviewing court is required to determine, after viewing the evidence in the light most favorable to the prosecution, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). It is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence and to draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill 2d. 363, 375 (1992). This court will not substitute its judgment for that of the trier of fact on questions involving the credibility of the witnesses or the weight of the evidence. *Campbell*, 146 Ill 2d. at 375. A criminal conviction will be reversed only if the evidence is so unsatisfactory as to raise a reasonable doubt. *Campbell*, 146 Ill 2d. at 375. For the reasons that follow, we do not find this to be such a case.

¶ 18 To sustain defendant's conviction for resisting a peace officer, the State was required to prove, in relevant part, that defendant knowingly resisted the performance by one known to him to be a peace officer. 720 ILCS 5/31-1(a) (West 2010). Here, the evidence, viewed in the light most favorable to the prosecution (*Campbell*, 146 Ill. 2d at 374), shows that Officer Newman activated the emergency lights of his vehicle before he approached defendant, who was parked illegally at the Citgo station. Officer Newman was also wearing a police badge in plain view in the middle of his chest, which was at eye level with defendant, and told him that he was a police officer. After defendant repeatedly refused to comply with the officer's requests to produce his identification and to exit the vehicle, Officer Newman attempted to unlock defendant's door. Defendant, in turn, pushed the officer's hand away and attempted to roll up his window. The officer then pulled the lock up, opened the door, and grabbed defendant, who then struggled with the officer before being handcuffed. This evidence was sufficient to allow a reasonable trier of

fact to find that defendant knowingly resisted the performance of one known to him to be a peace officer. 720 ILCS 5/31-1(a) (West 2010).

¶ 19 Defendant maintains, however, that Officer Newman's testimony was incredible, and unbelievable, uncorroborated by Officer Brazil, who did not testify, and contradicted by his testimony and that of Adekahunsi. Defendant also claims that the officer's testimony was impeached by his police report.

¶ 20 Credibility determinations, and conflicts in the testimony, are within the purview of the trier of fact which had the superior opportunity to observe the witnesses as they testified. *People v. Berland*, 74 Ill. 2d 286, 305-06 (1978). Here, the trier of fact clearly found Officer Newman more credible than the defense witnesses (*People v. Myers*, 94 Ill. App. 2d 340, 346 (1968)), and convicted defendant of the offense of resisting a peace officer. The jury was not required to believe defendant's self-serving testimony (*People v. Moreira*, 378 Ill. App. 3d 120, 130 (2007)) or that of his friend (*People v. Young*, 269 Ill. App. 3d 120, 123-24 (1994)), over that of Officer Newman, and the record provides no basis for disturbing the credibility determination made by the trier of fact (*Berland*, 74 Ill. 2d at 306-07).

¶ 21 Although the officer did not record every detail of the incident in his police report, this fact does not discredit his testimony, as he explained that his report was a summary which did not include every detail. *People v. Moore*, 341 Ill. App. 3d 804, 812 (2003). Police reports are generally abbreviated (*People v. Watkins*, 44 Ill. App. 3d 73, 76-77 (1976)), and in this case, the omissions were fully explained at trial (*People v. Scott*, 152 Ill. App. 3d 868, 872 (1987)). It was the responsibility of the trier of fact to determine the significance of the officer's failure to include certain facts in his report (*People v. Hobson*, 169 Ill. App. 3d 485, 495 (1988)), and here, we find that these matters were not of such magnitude as to undermine the officer's credibility on the essential elements of the charged offense (*People v. Villalobos*, 78 Ill. App. 3d 6, 13 (1979)).

¶ 22 We also find that Officer Newman's testimony that he and his partner approached defendant based on a parking violation, which was also impeding their surveillance of the employees in the gas station, and ordered the two out of the car, was not unbelievable or unworthy of belief (*People v. Brown*, 388 Ill. App. 3d 104, 107-09 (2009)) as claimed by defendant. The jury evaluated this evidence and obviously found that Officer Newman was more credible than defendant and his friend. We, thus, have no basis to reverse that decision. *People v. Bofman*, 283 Ill. App. 3d 546, 553 (1996).

¶ 23 In reaching this conclusion we find *People v. Bush*, 4 Ill. App. 3d 669 (1972), and *People v. Infelise*, 32 Ill. App. 3d 224 (1975), cited by defendant readily distinguishable from the case at bar. In *Bush*, defendant was using the urinal in a public washroom when a casually dressed young man came in. *Bush*, 4 Ill. App. 3d at 671. Defendant allegedly committed an act of public indecency there, then began to talk to the man, who "flashed" his wallet and said he was a policeman. *Bush*, 4 Ill. App. 3d at 671. Defendant told him he did not believe him, and, according to the officer, pushed him down. *Bush*, 4 Ill. App. 3d at 673. The officer then fractured defendant's nose, and caused multiple fractures to defendant's chest. *Bush*, 4 Ill. App. 3d at 673. The doctor who treated defendant testified that defendant told him that he did not believe the man was a police officer. *Bush*, 4 Ill. App. 3d at 673. On appeal, this court found, *inter alia*, that the evidence of the severe injuries suffered by the 63-year-old defendant, the fact that defendant was found not guilty of public indecency, and had a good reputation in his community, the numerous inconsistencies in the officer's testimony, and the corroborating disinterested testimony of the doctor, militated against affirming defendant's conviction for resisting a peace officer. *Bush*, 4 Ill. App. 3d at 673-74.

¶ 24 Here, the defense witness was a friend of defendant, rather than the independent, disinterested witness in *Bush*, and acknowledged that Officer Brazil had a badge on, and that he

knew that people who are wearing badges are police officers. In addition, the officer's testimony that he asked defendant to get out of his car which was illegally parked was not incredible or unworthy of belief, and is readily distinguishable from the officer's testimony in *Bush* that the much older and smaller defendant pushed him down and, for no apparent reason, the officer severely beat defendant leaving him hospitalized for two days.

¶ 25 In *Infelise*, this court found that the evidence was insufficient to prove beyond a reasonable doubt that defendant knowingly assaulted a police officer engaged in the performance of his duties. The evidence in that case showed that the police were driving in a private automobile, wearing cut off shorts and t-shirts, and carrying handguns in their waistbands. It also showed that defendant was a 17-year-old immigrant who did not speak English well, and when told by his mother in Italian that the men who were unexplainably pursuing him were police, he immediately put his handgun away. *Infelise*, 32 Ill. App. 3d at 227-28.

¶ 26 Here, unlike *Infelise*, defendant clearly understood English, the officers activated the emergency lights on their unmarked squad car, Officer Newman was wearing a police vest that stuck out from his body, and his badge was on the center of his chest at eye level to defendant. In addition, unlike *Infelise*, there clearly was a show of authority by police, and defendant continued to struggle with Officer Newman even after he brought out the handcuffs which eventually led defendant to "automatically assume" that the two men were police. Accordingly, we find *Infelise* and *Bush* factually distinguishable from the case at bar.

¶ 27 Defendant next contends that the trial court erred in giving IPI Nos. 24-25.20 and 24-25.12 (4th ed. 2000) where he did not raise an affirmative defense and these were affirmative defense instructions. He claims that these instructions implied that he "admitted to knowingly resisting an officer." The State responds that defendant forfeited this issue for review.

¶ 28 To preserve an issue for review, defendant must object at trial and raise the matter in a written post-trial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Here, defendant objected to IPI No. 24-25.20, but did not object to IPI No. 24-25.12, and he did not raise an instruction issue in his post-trial motion. As a result, he failed to preserve this issue for review. *Enoch*, 122 Ill. 2d at 186.

¶ 29 Defendant, nonetheless, claims that the matter should be considered as plain error where the case was allegedly close. The plain error doctrine is a narrow and limited exception to the general waiver rule allowing a reviewing court to consider a forfeited issue that affects substantial rights. *People v. Herron*, 215 Ill. 2d 167, 177-79 (2005). The burden of persuasion remains with defendant, and the first step is to determine whether an error occurred. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009). For the reasons that follow, we find that it did not.

¶ 30 We first note, contrary to defendant's assertion, that the subject instructions are not affirmative defenses in this case. *People v. Pfeiffer*, 41 Ill. App. 3d 924, 929 (1976). Rather, it appears that IPI No. 24-25.12 was given to inform the jurors that a peace officer need not retreat or desist from attempting to effectuate a lawful arrest even if defendant attempted to thwart it, and the amount of force the officer may use to effectuate the arrest. *Pfeiffer*, 41 Ill. App. 3d at 929. IPI No. 24-25.20, on the other hand, serves as a corollary advising the jurors that defendant may not use force to resist the arrest by a peace officer even though he believes, or the arrest is, unlawful.

¶ 31 We find this case analogous to *People v. Johnson*, 110 Ill. App. 3d 965 (1982). In *Johnson,* defendant, who was convicted of burglary, argued that the court improperly gave a voluntary intoxication instruction to the jury (*i.e.*, an intoxicated person is responsible for his conduct unless it renders him incapable of acting knowingly) over his objection that he did not raise intoxication as a defense, but rather to explain why he entered the building to seek shelter

from inclement weather and to use the bathroom. *Johnson*, 110 Ill. App. 3d at 968. This court held that where the defense witnesses repeatedly testified to defendant's excessive alcohol consumption on the evening in question, the instruction was properly provided to protect the State from adverse inferences which might have been drawn from the evidence of intoxication presented by defendant. *Johnson*, 110 Ill. App. 3d at 969. Similarly, here, IPI No. 24-25.20 was provided to avoid the adverse inference that defendant could have been justified in attempting to resist arrest if the officer had no lawful basis for the arrest. It did not imply that defendant knowingly resisted a police officer.

¶ 32 Defendant further maintains that the fact that the committee note to IPI No. 24-25.12 requires that the instruction be accompanied by IPI No. 24-25.06A, "*prove*[s]" that IPI No. 24-25.12 is an affirmative defense. (Emphasis in original.) IPI No. 24-25.06A is titled, "Issue in Defense of Justifiable Use of Force," and provides that the State must prove that defendant was not justified in using the force he used. IPI No. 24-25.06A was not requested or given to the jury in this case, and, contrary to defendant's contention, IPI No. 24-25.12 does not imply or assume that an act of resistance was proven. Rather, and as explained above, IPI No. 24-25.12 is directed to the officer's actions and the amount of justifiable force he may use in effectuating an arrest. *People v. Taylor*, 53 Ill. App. 3d 810, 819 (1977). As such, it is not an affirmative defense. *Pfeiffer*, 41 Ill. App. 3d at 929.

¶ 33 Moreover, defendant was charged with resisting a peace officer and did not present a defense based on reasonable force. Rather, his defense was based on lack of knowledge that Officer Newman was a police officer, and thus, there was no reason to give IPI No. 24-25.06A. Further, the other instructions do not indicate or assume resistance, but rather discuss the force the officer may use (IPI 24-25.12), and that force is not authorized by the person being arrested even if he believes the arrest is unlawful or it is unlawful (24-25.20). Accordingly, we find no

error by the court in giving to the jury IPI Nos. 24-25.12 and 24-25.20 to excuse defendant's forfeiture of this issue.

¶ 34 Alternatively, defendant claims that trial counsel was ineffective for failing to include the alleged error regarding the trial court's jury instructions in his post-trial motion. However, defendant's conclusory presentation of this issue and failure to adequately brief it, waives the issue for review. *People v. Rockey*, 322 Ill. App. 3d 832, 839 (2001).

¶ 35 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 36 Affirmed.