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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. 12 CR 15842
)	
LEROY SWAYZER,)	Honorable
)	Nicholas R. Ford,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Pucinski and Justice Mason concurred in the judgment.

ORDER

¶ 1 *Held:* Judgment entered on two counts of resisting a peace officer affirmed over defendant's contention that the court misconstrued the evidence and that the evidence was insufficient to prove his guilt.

¶ 2 Following a bench trial, defendant Leroy Swayzer was convicted of two counts of resisting a peace officer and sentenced to concurrent terms of four years' in prison. On appeal, he maintains that the trial court violated his due process rights when it mistakenly recalled the evidence. He also challenges the sufficiency of the evidence to sustain his convictions. We affirm. The facts presented to the trial court sufficiently support the finding that Swayzer should have known that he was resisting police officers placing him under arrest.

¶ 3 Background

¶ 4 At trial, Chicago police officer Jacqueline Obrzut testified that at 11 p.m. on August 2, 2012, she and Officer LeClair responded to a domestic battery at a home on South Honore Street, Chicago. The officers, in uniform and having arrived in a marked squad car, knocked on the door, and when Keyona Lloyd opened it, the officers asked her and Swayzer, who was also inside, to step outside. Officer Obrzut explained that in domestic disturbance cases the parties are separated, and she spoke with Lloyd while Officer LeClair spoke to Swayzer.

¶ 5 After speaking to Lloyd, Officer Obrzut walked behind Swayzer, and nodded to Officer LeClair, indicating that Lloyd wanted Swayzer arrested. She did not recall if she said to place him under arrest, but "went cuffs," and both officers moved to grab one of Swayzer's hands. He immediately began to flail his arms, and then stiffened them. The officers told him to put his arms behind his back; again, he flailed his arms. The officers fell to the ground with Swayzer who elbowed Officer Obrzut in the chest, and she landed on her right elbow on the concrete. Obrzut testified that Officer LeClair continued to attempt to handcuff Swayzer, but was unable to do so, and Obrzut told Swayzer to stop struggling or she would pepper spray him. When he continued to struggle, she sprayed him, and, with the help of back-up officers who arrived, Swayzer finally was taken into custody.

¶ 6 Obrzut further testified that her right elbow swelled and she was bleeding. She was treated at a hospital for her injury, and later had to undergo physical therapy.

¶ 7 Officer LeClair testified that while he was talking to Swayzer, Obrzut nodded to him. This was their predetermined signal that the offender should be arrested. No words were spoken.

After that gesture, he and Obrzut grabbed one of Swayzer's hands, and in response, Swayzer stiffened up, tried to pull away and attempted to flee. Swayzer continued to struggle as they tried to handcuff him. LeClair grabbed Swayzer in a bear-like hug, which freed Swayzer's arms. Swayzer began to rock back and forth, and then threw his elbows back, causing Obrzut, who was behind them, to go flying. LeClair then knocked Swayzer's feet out from under him, and they both fell. Obrzut told Swayzer to stop resisting. But, he continued, leading her to warn Swayzer that she would pepper spray him. Again Swayzer failed to comply, and Obrzut sprayed him. Swayzer continued "squirming" on the ground before he was eventually taken into custody. Officer LeClair suffered some abrasions.

¶ 8 Keyona Lloyd testified that she is Swayzer's wife, and they have seven children together. On August 2, 2012, she was living with Swayzer. They had a verbal argument just outside their home, but there was no screaming or any altercation. She did not call the police, but a male and female officer arrived shortly afterwards. Officer LeClair talked with Swayzer, and Officer Obrzut spoke to Lloyd. She told the officer to have Swayzer go for a walk, and did not tell her to arrest Swayzer. Lloyd never heard the officers say they were going to arrest Swayzer, but Officer Obrzut approached Swayzer from behind, and she saw Swayzer, but not the officers, fall to the ground. Obrzut then pepper-sprayed Swayzer, back-up officers arrived, and they assaulted Swayzer while he was still on the ground. Eventually Swayzer was arrested and placed in a police car, where the police continued to assault him. Lloyd testified that she never saw Swayzer hit or punch the officers, and that Swayzer did not resist arrest or struggle with police, but, rather, was completely compliant.

¶ 9 After the witnesses' testimony, defendant moved for a directed finding. He maintained that "[t]here's nothing been shown that [defendant] knew before they went to grab his arms that he was going to be arrested." The court responded, "[t]hat's not what the last witness said," and counsel replied, "[n]o it is." The court denied Swayzer's motion.

¶ 10 At the close of evidence, and closing argument by defense counsel, the court interjected that once Swayzer was lying on the ground and told to submit, and he still does not submit, he knows he is being arrested. The court found there was ample evidence throughout the interaction with police that had to indicate to Swayzer that he was being arrested. The court said that when the officers' hands are on your wrist, and they ask you to put your arms behind you, you have to be an "idiot" not to understand that you are being arrested, and Swayzer is not an idiot.

¶ 11 The court declared Swayzer guilty of two counts of resisting a peace officer, noting the officers testified "very succinctly and credibly." The court was not impressed with Lloyd's testimony. The court also observed that Swayzer's resistance to the lawful arrest resulted in the officers' injuries.

¶ 12 Analysis

¶ 13 On appeal, Swayzer first contends that his rights to due process were violated because the trial court relied on an incorrect recollection of Officer LeClair's testimony regarding Swayzer's knowledge of his arrest. In particular, Swayzer points to the court's response to his counsel's assertion during his motion for a directed finding that "there's nothing been shown that [defendant] knew before they went to grab his arms that he was going to be arrested." The court responded that Officer LeClair did not so testify.

¶ 14 Swayzer acknowledges in his opening brief that he did not timely object to the alleged error by the court. He asserts, however, that this court has emphasized that the fundamental importance of a fair trial and the practical difficulties in objecting to the trial court's conduct, compel the appellate court to be less rigid in applying the waiver rule. He also requests plain error review. In his reply brief, Swayzer contends that the State forfeited any claim of waiver by not alleging that he forfeited this error. In support, he cites *People v. McKown*, 236 Ill. 2d 278, 308 (2010), which held that the State may forfeit a claim that defendant waived an issue by not properly preserving it for review. Here, whether the merits of the issue are considered due to the State's failure to argue forfeiture or because the plain error doctrine applies, we find no error. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) (first step in plain-error analysis is to determine whether an error occurred).

¶ 15 The record shows that Officer LeClair was facing and talking to Swayzer when Officer Obrzut, who was behind Swayzer, nodded to Officer LeClair that Lloyd wanted Swayzer arrested. Both officers then reached for one of Swayzer's wrists. At that point, Swayzer should have known that he was being placed under arrest (*People v. McKinney*, 62 Ill. App. 3d 61, 67 (1978)), but struggled against them, stiffening his arms as they attempted to handcuff him.

¶ 16 In addition, the record shows that the police were called based on a domestic disturbance. Although Lloyd testified that she did not call the police, they were separated on police arrival as the officers attempted to assess the situation. Under these circumstances, even without a verbal announcement, the officers' simultaneous reach for Swayzer's wrists sufficed to apprise him that he was being placed under arrest. In addition, Swayzer continued to resist when the officers told

him to put his arms behind his back, and attempted to handcuff him.

¶ 17 In reaching this conclusion, we find Swayzer's reliance on *People v. Bowie*, 36 Ill. App. 3d 177, 180 (1976), *People v. Mitchell*, 152 Ill. 2d 274, 323 (1992), and *People v. Williams*, 2013 IL App (1st) 111116, ¶ 90, misplaced. In those cases the trial court incorrectly recalled pertinent evidence essential to each defendant's case. By contrast, here the court correctly recalled the testimony of Officer LeClair. Accordingly, there was no error.

¶ 18 Swayzer next contends that the evidence was insufficient to establish that he knew he was being placed under arrest where the officers never told him he was under arrest before approaching him from behind and suddenly grabbing his wrists. Without his having this knowledge, he contends, his conviction must be reversed.

¶ 19 Swayzer challenges the sufficiency of the evidence to sustain his conviction. Consequently, viewing, as we must, the evidence in the light most favorable to the prosecution, the issue becomes 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). 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, and will reverse a criminal conviction only if the evidence is so unsatisfactory as to raise a reasonable doubt. *Campbell*, 146 Ill 2d. at 375.

¶ 20 Swayzer was charged and convicted of resisting arrest by a police officer. To sustain the conviction, the State has to prove, in relevant part, that Swayzer knowingly resisted the performance by one known to him to be a police officer. 720 ILCS 5/31-1(a) (West 2012).

¶ 21 An arrest is defined as a seizure of a person, accomplished by actual restraint of the person or by his or her submission into custody. *McKinney*, 62 Ill. App. 3d at 67. Although the intention to arrest must be communicated, and defendant's understanding of that intent is a factor, the test does not consider what defendant thought, but rather, what a reasonable person, innocent of any crime, would have thought had he or she been in defendant's shoes. *McKinney*, 62 Ill. App. 3d at 67, citing *People v. Howlett*, 1 Ill. App. 3d 906, 910 (1971). In making an arrest, police need not announce to the arrestee that he or she is under arrest; rather, the police officer's actions alone can be sufficient to confer knowledge on the part of the defendant that he or she is being placed under arrest, such as when they attempt to handcuff the individual. *McKinney*, 62 Ill. App. 3d at 67.

¶ 22 The evidence, viewed in the light most favorable to the prosecution (*Campbell*, 146 Ill. 2d at 374), shows that the police officers, wearing their full uniforms, arrived in a marked squad car to respond to a domestic disturbance between Swayzer and Lloyd. The officers asked them to come outside, and separated them to determine the situation. Officer Obrzut talked to Lloyd while Officer LeClair talked to Swayzer. Officer Obrzut then walked behind Swayzer, nodded to Officer LeClair as a signal to arrest Swayzer, and both officers reached for one of Swayzer's hands. At that point, Swayzer had to know he was interacting with uniformed police officers attempting to place him under arrest. *McKinney*, 62 Ill. App. 3d at 67.

¶ 23 In response, Swayzer immediately began to flail his arms, then stiffened them when the officers told him to put his arms behind his back. Swayzer continued to resist, and Officer LeClair placed Swayzer in a bear hug in an attempt to gain control over him. Swayzer threw his

elbow back into Officer Obrzut who fell onto her elbow. Officer LeClair then swiped Swayzer's feet out from under him, and they both fell to the ground.

¶ 24 Officer Obrzut warned Swayzer that if he continued to resist, she would pepper spray him. He, however, continued to resist so she sprayed him. Swayzer continued to fight until back up officers arrived and helped place him under arrest.

¶ 25 From this evidence the trial court could reasonably find that Swayzer knew police officers were placing him under arrest, but nevertheless, he resisted (*McKinney*, 62 Ill. App. 3d at 67). Thus Swayzer was proven guilty of resisting a peace officer beyond a reasonable doubt.

¶ 26 In his reply brief, Swayzer maintains that the officers' injuries were not proximately caused by his refusal to submit to police. Because this issue was not raised in the opening brief, it is waived and may not be raised in the reply brief, in oral argument, or on a petition for rehearing. *People v. Polk*, 2014 IL App (1st) 122017, ¶49, citing Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 27 We affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.