2021 IL App (4th) 200407-U

NO. 4-20-0407

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 29, 2021
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. RONALD DEAN DREYER, Defendant-Appellant.	) Appeal from the) Circuit Court of) McLean County) No. 18CM935)) Honorable) Pablo A. Eves,) Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Given the framing of the issues by the agreed-upon jury instructions, the defendant's admitted refusals of a police officer's commands to exit a vehicle during a traffic stop was resisting a peace officer (720 ILCS 5/31-1(a) (West 2018)).

(2) By omitting to ask the prospective jurors if they understood and accepted the constitutional principles in Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), the circuit court failed to comply with that rule, but this error is forfeited for lack of an objection by the defendant, and because the evidence in the trial was not closely balanced, the doctrine of plain error does not avert the forfeiture.

¶ 2 In the circuit court of McLean County, a jury found the defendant, Ronald Dean Dreyer, guilty of resisting a peace officer (720 ILCS 5/31-1(a) (West 2018)). The court sentenced him to two days in jail and a fine. He appeals on two grounds.

¶ 3 First, Dreyer challenges the sufficiency of the evidence. At the same time, however, he does not dispute that (1) in a traffic stop, he disobeyed a police officer's commands to exit his vehicle and (2) such disobedience was obstructing a peace officer within the meaning of section

31-1(a). Because the agreed-upon jury instructions required the jury to determine whether Dreyer had resisted or obstructed a peace officer and because he does not dispute that what he did was obstruction, the sufficiency of the evidence is not genuinely at issue.

¶ 4 Second, Dreyer observes that the circuit court failed to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) in that the court neglected to ask the prospective jurors if they understood and accepted the constitutional principles listed in that rule. We agree that the court thereby erred. Because Dreyer, however, never objected to the error, his contention of error is forfeited. Further, because the evidence was not closely balanced, the doctrine of plain error does not avert the forfeiture. Therefore, we affirm the judgment.

¶ 5 I. BACKGROUND

¶ 6 The information charged that on August 11, 2018, Dreyer resisted the performance by McLean County Deputy Sheriff Bryan McCall of an authorized act within his official capacity in that, during a traffic stop, Dreyer "refused to comply with commands to exit his vehicle."

¶ 7 After reading the charge to the prospective jurors, the circuit court instructed them as follows:

> "And there are some principles that I'd like to tell you about at this point in time. It's very important that you understand these principles. It is essential that each of you embrace each of these fundamental principles. Under the law, every defendant in our country is presumed innocent of the charge or charges. This presumption remains with the defendant throughout every stage of the trial even through your deliberations on your verdict. This presumption is not overcome unless from all of the evidence in the case you are convinced beyond a reasonable doubt that the defendant is guilty of one or more charges.

> The state has the burden of proving the guilt of the defendant beyond a reasonable doubt and this burden remains on the state throughout the case.
>
> A defendant is not required to prove his innocence nor is the defendant required to present any evidence at all. A defendant may simply rely on the presumption of innocence or the inability of the state to present sufficient evidence to meet its burden.
>
> Moreover, a defendant has a constitutional right not to testify and the jury may not draw any inference of guilt if the defendant does not testify."

The court did not ask the prospective jurors, however, if they understood and accepted those principles.

¶ 8 In the ensuing jury trial, the evidence tended to show that on August 11, 2018, in Bloomington, Illinois, McCall was in the process of parking his unmarked squad car alongside a curb when Dreyer drove close by him, leaning on his horn. McCall followed Dreyer, activated his emergency lights, and pulled him over for an investigatory stop. Dreyer got out of his vehicle and approached McCall's squad car, pointing and yelling. McCall got out of his squad car and ordered Dreyer to stop walking. Dreyer kept walking. He walked back to his truck and climbed back into the driver's seat. McCall attempted, without success, to prevent him from closing the driver's door of the truck. Then, pointing his taser at Dreyer, McCall ordered him to place his hands on the steering wheel and not to reach anywhere. McCall placed his hands on the steering wheel. McCall then ordered Dreyer, repeatedly, to get out of the truck. Dreyer did not comply with that order. Backup arrived. A dashcam video showed McCall and another police officer, Charles Werts, pulling Dreyer out of the driver's seat. In the defense case, Dreyer took the stand on his own behalf

and admitted disobeying McCall's commands to exit his truck. Dreyer explained in his testimony that he had been too afraid to get out.

¶ 9 The presentation of evidence concluded. The circuit court and the attorneys had a jury instruction conference. Afterward, in an issues instruction to which Dreyer had made no objection, the circuit court instructed the jury:

> "To sustain the charge of resisting or obstructing a peace officer, the State must prove the following propositions: First proposition: that Deputy McCall was a peace officer; and, second proposition: that the defendant knew Deputy McCall was a peace officer; and, third proposition: that the defendant knowingly *resisted or obstructed* the performance by Deputy McCall of an authorized act within his official capacity.
>
> If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.
>
> If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty." (Emphasis added.)

¶ 10 The jury found Dreyer guilty of resisting a peace officer. The court sentenced him to two days in jail and a fine of $75.

¶ 11 II. ANALYSIS

¶ 12 A. The Sufficiency of the Evidence

¶ 13 Section 31-1(a) of the Criminal Code of 2012 provides, "A person who knowingly *resists or obstructs* the performance by one known to the person to be a peace officer *** of any

authorized act within his or her official capacity commits a Class A misdemeanor." (Emphasis added.) 720 ILCS 5/31-1(a) (West 2018). The information charged Dreyer with "resist[ing]," not obstructing, the performance by Deputy Sheriff McCall of an authorized act within his official capacity. Dreyer allegedly resisted by "refus[ing] to comply with commands to exit his vehicle." A person "resists" a peace officer, Dreyer explains, only if the person "withstands the force of a peace officer or exerts himself to counteract that officer." See *People v. Baskerville*, 2012 IL 111056, ¶ 25; *People v. Hilgenberg*, 223 Ill. App. 3d 286, 289 (1991). In Dreyer's view, the evidence showed that he merely disobeyed McCall's commands to exit his vehicle, not that he physically acted against McCall or used any physical exertion against him. Dreyer does not dispute that he passively disobeyed McCall's commands to exit his vehicle. Nor does Dreyer dispute that, under case law, passively disobeying a police officer's commands to exit a vehicle can be, within the meaning of section 31-1(a), *obstruction* of a peace officer. See *People v. Kotlinski*, 2011 IL App (2d) 101251, ¶ 47; *People v. Synnott*, 349 Ill. App. 3d 223, 228 (2004). But the information charged Dreyer with "resist[ing]" a peace officer, not with obstructing a peace officer. Dreyer objects that he "was convicted of resisting a peace officer upon proof of obstructing a peace officer."

¶ 14 Let us assume, for the sake of argument, that Dreyer is correct in the distinction he draws between resistance and obstruction. Even so, it was the agreed-upon jury instructions that framed the law for the jury, and the jury instructions spoke of both resistance and obstruction. The circuit court instructed the jury, without objection by Dreyer, "The law that applies to this case is stated in these instructions, and it is your duty to follow them." The issues instruction, to which Dreyer did not object, required the jury to determine whether he knowingly had "*resisted or obstructed* the performance by Deputy McCall of an authorized act within his official capacity."

(Emphasis added.) The verdict forms that the court gave to the jury, again without objection by Dreyer, read, "We, the jury, find the defendant[,] Ronald Dreyer, guilty of Resisting a Peace Officer," and, alternatively, "We, the jury find the defendant[,] Ronald Dreyer, not guilty of Resisting a Peace Officer." Thus, if the jury found the three propositions in the issues instruction to be proven, including the proposition that Dreyer knowingly had "resisted or obstructed" McCall, the jury was to find Dreyer "guilty of Resisting a Peace Officer."

¶ 15 This was the framing of the issues to which Dreyer consented. In the jury instruction conference, he never raised a variance between the jury instructions and the information. Therefore, on appeal, he has forfeited any objection to such a variance. See *People v. Downs,* 2015 IL 117934, ¶ 13; *People v. Enoch,* 122 Ill. 2d 176, 186 (1988).

¶ 16 It is true that forfeiture can be relaxed insomuch as jury instructions contain "substantial defects." See Ill. S. Ct. R. 451(c) (eff. Apr. 8, 2013) (providing that "if the interests of justice [so] require," a failure to object does not forfeit "substantial defects" in criminal jury instructions). Dreyer does not contend, however, that the jury instructions contain "substantial defects." See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (providing that "[p]oints not argued are forfeited and shall not be raised in the reply brief *** or on petition for rehearing"). Given the jury instructions to which he never objected and given his admission to us that the evidence was sufficient to convict him of obstructing a peace officer (720 ILCS 5/31-1(a) (West 2018)), we find no merit in his challenge to the sufficiency of the evidence.

¶ 17 B. The Circuit Court's Failure to Ask the Prospective Jurors if They Understood and Accepted the Rule 431(b) Principles

¶ 18 Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) provides as follows:

> "(b) *The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles*: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that if a defendant does not testify it cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's decision not to testify when the defendant objects.
>
> The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." (Emphasis added.) Ill. S. Ct. R. 431(b) (eff. July 1, 2012).

In this case, the circuit court informed the prospective jurors of the four principles enumerated above, but the court never asked the prospective jurors if they understood and accepted the principles. Such noncompliance with Rule 431(b)—which we have characterized as "judicial" and "prosecutorial malpractice" (*People v. Neal*, 2020 IL App (4th) 170869, ¶ 196)—was an error.

¶ 19 It was an error, however, to which Dreyer never objected. Consequently, on appeal, the error is deemed to be procedurally forfeited. See *Enoch*, 122 Ill. 2d at 186.

¶ 20 Dreyer seeks to avert the forfeiture by invoking the doctrine of plain error. Under Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967), "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." For the plain-error doctrine to prevent the forfeiture of an issue, either of two propositions must hold true:

> "(1) *** a clear or obvious error occurred[,] and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) *** a clear or obvious error occurred[,] and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." (Internal quotation marks omitted) *People v. Sebby*, 2017 IL 119445, ¶ 48.

Dreyer maintains that in his case the first proposition is true. He argues that the circuit court's noncompliance with Rule 431(b) was a clear or obvious error that, because of the closeness of the evidence, could have made the difference between a guilty verdict and an acquittal.

¶ 21 We agree that omitting to ask the prospective jurors if they understood and accepted the four principles listed in Rule 431(b) was a clear or obvious error. By Dreyer's own admission, however, the evidence was not closely balanced. In his brief, he admits that (1) he disobeyed Deputy Sheriff McCall's repeated command to get out of his truck and (2) disobeying a police officer's command to exit a vehicle is obstruction of a peace officer within the meaning of section 31-1(a) of the Criminal Code of 2012 (720 ILCS 5/31-1(a) (West 2018)). Therefore, contrary to Dreyer's claim, the evidence was not closely balanced. Because his premise for the application of the plain-error doctrine is unestablished, the doctrine does not avert the forfeiture of the Rule 431(b) issue, and the forfeiture will be given effect. See *People v. Anderson*, 325 Ill. App. 3d 624, 636 (2001).

¶ 22 III. CONCLUSION

¶ 23 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 24 Affirmed.