2024 IL App (1st) 220768-U

FIFTH DIVISION
April 19, 2024

No. 1-22-0768

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. 20 DV 74917
	)	
JAIRO GABRIEL MARTINEZ,	)	Honorable
	)	Jeanne Wrenn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Justices Lyle and Navarro concurred in the judgment.

ORDER

¶ 1 *Held*: We reduce defendant's conviction for child endangerment to one for reckless conduct, where the evidence failed to establish that he knowingly placed his five-month-old child in circumstances that endangered the child's life or health. We vacate one of defendant's convictions for resisting a peace officer under the one-act, one-crime doctrine.

¶ 2 Following a bench trial, defendant Jairo Gabriel Martinez was found guilty of one count of child endangerment and two counts of resisting a peace officer and sentenced to concurrent terms of 12 months of conditional discharge. On appeal, Mr. Martinez argues his conviction for child endangerment should be reversed because the evidence was insufficient to prove beyond a

reasonable doubt that he knowingly placed his child in circumstances that endangered the child's life or health. The parties agree that if this court finds that the evidence failed to establish that Mr. Martinez knowingly placed his son in danger but does show that he acted recklessly, we should reduce the conviction to one for reckless conduct. Mr. Martinez also argues that his two convictions for resisting a peace officer violate the one-act, one-crime doctrine. For the reasons that follow, we reduce Mr. Martinez's conviction for child endangerment to one for reckless conduct and vacate one of his sentences of conditional discharge for resisting a peace officer.

¶ 3 I. BACKGROUND

¶ 4 Mr. Martinez was charged by misdemeanor complaint with one count of child endangerment (720 ILCS 5/12C-5(a)(2) (West 2020)), alleging that he "knowingly put [J.M.], a child under the age of 18, into circumstances that endangered" his life or health "in that [Mr. Martinez] grabbed and held [J.M.] with force and refused to let go of and pulled [J.M.] as the police were attempting to detain [Mr. Martinez]." He was also charged by separate misdemeanor complaints with two counts of resisting a peace officer (720 ILCS 5/31-1(a) (West 2020)), with a different officer named as the complainant in each complaint. Each count for resisting a peace officer alleged that Mr. Martinez "knowingly resisted the performance of an authorized act within the officer[']s official capacity," namely, that he "refused *** numerous commands to put his hands behind his back" and "stiffened and refused to bring his arms behind him to be handcuffed, in [an] attempt to defeat an arrest."

¶ 5 At trial, Allison Martinez, Mr. Martinez's wife, testified that at around 4:30 a.m. on May 18, 2020, she and her three children were woken up by Mr. Martinez who was "flipping all of the lights on, banging filing cabinets, [and] closet doors." He told Ms. Martinez that he dreamed they had to gather all the children's belongings and vacate the house. He accused her of "being sneaky,"

took her phone, and began following her. Around 5:30 a.m., she got on her computer pretending to work, but emailed her mother and brother to ask them to call the police.

¶ 6 Around 8 a.m., two officers arrived at the home, and Ms. Martinez let them inside. Mr. Martinez screamed that Ms. Martinez "called the police on him." Everyone was in the living room, including J.M., who was five months old and in his bassinet, and the couples' two other children. Ms. Martinez told the officers she wanted to go to her mother's house with the children because she did not feel safe.

¶ 7 Ms. Martinez testified that Mr. Martinez became "more and more aggravated and frustrated," was acting erratically, made "very quick movements back and forth," screamed at the police, and screamed that she was "being sneaky." He told her, "this isn't going to end well" and picked J.M. up and held him, according to Ms. Martinez's testimony "like a football."

¶ 8 According to Ms. Martinez, Mr. Martinez then started "shuffling" through a bag near the door. The officers told him to "back away," "[let] go of the baby," and "drop the baby. The officers then approached him and tried to put his arms behind his back. Ms. Martinez tried to take J.M. from Mr. Martinez and extended her hands to catch him. Ms. Martinez testified that Mr. Martinez was "aggressively whipping" his body left to right and did not let go of J.M. and that he was "aggressively pulling" on J.M.'s legs. Ultimately, the officers were able to position Mr. Martinez's arms behind his back and Ms. Martinez took J.M.

¶ 9 On cross-examination, Ms. Martinez explained that she did not feel safe because Mr. Martinez threatened to take the children. She confirmed that there were no court limitations on who had custody of the children.

¶ 10 Ms. Martinez stated that the "football hold" was a "fine way" to hold a baby, but that Mr. Martinez was "whipping" J.M.'s body. When the officers pulled Mr. Martinez's arms, Ms.

Martinez took J.M. The transition was "not smooth," as Mr. Martinez was trying to pull J.M. away from her and the officers. The officers were "[t]rying to pry" Mr. Martinez's arms to force him to release J.M. so Ms. Martinez could take J.M. Ms. Martinez stated it "seemed like forever" before J.M. was released, but it was about "one minute." On redirect examination, Ms. Martinez clarified that she did not know how long it took to take J.M. from Mr. Martinez.

¶ 11 Chicago police officer Jeffrey Merrifield testified that he responded to the residence. Officer Findysz was already inside. When Officer Merrifield arrived, a verbal altercation was happening between Ms. Martinez and Mr. Martinez. Ms. Martinez told the officers she wanted to go to her mother's house.

¶ 12 Officer Merrifield wore a body-worn camera (BWC) and stated the BWC video truly and accurately captured the events. The BWC video, as well as the video from the other officer, were admitted into evidence without objection and are included in the record on appeal.

¶ 13 In the video, Mr. Martinez picks up J.M., who is crying in his bassinet. Mr. Martinez stands with his back to a wall holding J.M. J.M.'s torso rests on Mr. Martinez's bent forearm, with J.M.'s stomach touching the inside of Mr. Martinez's forearm, his back against Mr. Martinez's chest, his head resting near Mr. Martinez's bent elbow facing outward, and his feet dangling near Mr. Martinez's hand. The hold appears to be quite secure. Mr. Martinez is seen arguing with the police officers. While holding J.M., Mr. Martinez moves into the living room toward the open entry door, bends down, and searches through a bag.

¶ 14 Officer Merrifield orders Mr. Martinez to step away. Mr. Martinez, still holding J.M., continues going through the bag. Officer Merrifield asks, "what are you grabbing?" Using both hands, he grabs the hand and wrist of the arm Mr. Martinez is using to reach into the bag and exclaims, "you don't go into a bag like that!" Mr. Martinez responds, "excuse me," and walks

toward a couch as Officer Merrifield still holds onto his wrist. At this point, Officer Findysz tries to remove J.M from Mr. Martinez's arm and Officer Merrifield tries to maneuver Mr. Martinez's other arm behind his back. Mr. Martinez screams, and a child is also heard screaming in the background. Ms. Martinez then comes into view and tries to take J.M. from Mr. Martinez, while Officer Merrifield and Officer Findysz try to put his arms behind his back. During this time, Mr. Martinez is being ordered to and does not release J.M. Mr. Martinez then becomes partially blocked from view. J.M. is next seen in Ms. Martinez's arms. The officers then attempt to handcuff Mr. Martinez, who kneels on a couch and continues to struggle with them.

¶ 15 After Officer Merrifield viewed his BWC video in court, he testified that he tried to grab Mr. Martinez's hand because he "didn't know what he was reaching for." Mr. Martinez "pulled away and tightened the grip" on J.M. Officer Merrifield asked Mr. Martinez to put J.M. down "a couple of times," and Mr. Martinez did not do so. Officer Merrifield tried to keep Mr. Martinez's arms secure so Officer Findysz could try to grab J.M.

¶ 16 On cross-examination, after viewing a portion of the video again, Officer Merrifield confirmed that Mr. Martinez retrieved an "object," not a weapon, from the bag, but Officer Merrifield did not know what it was. Officer Findysz was "protecting the child" and Officer Merrifield was holding Mr. Martinez's arm. Officer Merrifield believed the child was endangered because Mr. Martinez did not comply with orders to release J.M., but he instead "pull[ed] the child closer" and refused to give J.M. to Officer Findysz. Officer Merrifield confirmed that Mr. Martinez made jerking movements and was swaying as he held J.M. Officer Merrifield did not tell Mr. Martinez he was under arrest as Officer Merrifield was attempting to handcuff him because Officer Merrifield felt that would agitate him more. Officer Merrifield believed Mr. Martinez was having a mental breakdown, which required handcuffing him for safety reasons.

¶ 17 On redirect examination, Officer Merrifield testified that Mr. Martinez was arrested after J.M. was removed from him. Officer Merrifield had asked Mr. Martinez to put his hands behind his back three to four times and Mr. Martinez had refused.

¶ 18 The trial court found Mr. Martinez guilty of one count of child endangerment and two counts of resisting a peace officer. The court found Ms. Martinez's testimony credible and that Officer Merrifield's testimony "should be afforded the most weight," noting that he was a trained officer responding to a call. The court stated that Mr. Martinez made a furtive motion to a bag when the uniformed officers had no idea what it contained and had instructed him not to do so. Further, Mr. Martinez made "erratic motions" while holding J.M. and had "no respect for the command of the peace officers trying to create *** safety." The court observed there was "no peaceful hand off" of J.M. and in the trial court's view, the officers acted with "extreme patience" whereas Mr. Martinez was "combative" and "noncompliant."

¶ 19 The trial court imposed concurrent terms of 12 months of conditional discharge and ordered Mr. Martinez to take anger management classes, parenting classes, and receive a mental health evaluation. Mr. Martinez did not file a motion for a new trial or a motion to reconsider his sentence.

¶ 20 II. JURISDICTION

¶ 21 Mr. Martinez was sentenced on December 14, 2021, and filed his notice of appeal on April 11, 2022. On March 29, 2023, the Illinois Supreme Court issued a supervisory order directing this court to treat that notice of appeal as a properly perfected appeal from the circuit court's judgment. *Martinez v. Justices of the Appellate Court, First District*, No. 129483 (Ill. March 29, 2023) (supervisory order). We have jurisdiction over this appeal under article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 (eff. Feb 6, 2013) and 606 (eff. July 1, 2017), governing appeals from final judgments in criminal cases.

¶ 22 III. ANALYSIS

¶ 23 A. Sufficiency of the Evidence of Child Endangerment

¶ 24 On appeal, Mr. Martinez first challenges the sufficiency of the evidence establishing that he knowingly caused J.M. to be placed in circumstances that endangered J.M.'s life or health.

¶ 25 In considering a challenge to the sufficiency of the evidence, the relevant inquiry 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.' " (Emphasis in original.) *People v. McLaurin*, 2020 IL 124563, ¶ 22 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This court will not retry the defendant when reviewing a challenge to the sufficiency of the evidence. *People v. Nere*, 2018 IL 122566, ¶ 69. The trier of fact's role is to "assess the credibility of the witnesses, weigh the evidence presented, resolve conflicts in the evidence, and draw reasonable inferences from the evidence." *People v. Daniel*, 2022 IL App (1st) 182604, ¶ 102. A reviewing court will not substitute its judgment for that of the trier of fact with respect to those issues. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009).

¶ 26 The trier of fact need not "disregard inferences that flow normally from the evidence before it" or "search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *People v. Jackson*, 2020 IL 124112, ¶ 70. Therefore, we "must allow all reasonable inferences from the record in favor of the prosecution." *People v. Givens*, 237 Ill. 2d 311, 334 (2010). A conviction will not be set aside unless "the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt." *People v. Bradford*, 2016 IL 118674, ¶ 12.

¶ 27 To find defendant guilty of child endangerment as charged, the State needed to prove that defendant "endanger[ed] the life or health of a child when he *** knowingly *** cause[d] or

permit[ted] a child to be placed in circumstances that endanger[ed] the child's life or health." 720 ILCS 5/12C-5(a)(2) (West 2020).

¶ 28 A person acts knowingly when he is "consciously aware that his conduct is practically certain to cause the offense defined in the statute." *People v. Melton*, 282 Ill. App. 3d 408, 417 (1996); see also 720 ILCS 5/4-5 (West 2020). Knowledge is ordinarily proven through circumstantial evidence, rather than direct proof. *People v. Jones*, 2023 IL 127810, ¶ 30. A defendant "need not admit knowledge for the trier of fact to conclude that he acted knowingly." *People v. Penning*, 2021 IL App (3d) 190366, ¶ 19. Knowledge can be inferred from the surrounding facts and circumstances. *People v. Frazier*, 2016 IL App (1st) 140911, ¶ 23.

¶ 29 Viewing the evidence, including the video, in the light most favorable to the State, we cannot find that there is a basis on which to sustain Mr. Martinez's conviction for child endangerment. The evidence at trial simply does not show, even circumstantially, that Mr. Martinez acted with knowledge that his conduct was endangering his son. Mr. Martinez picked up his crying son with care and continued to hold him while he argued with the police. The BWC video shows Officer Merrifield grabbing Mr. Martinez's hand and wrist while Mr. Martinez is still holding J.M. Officer Merrifield then tries to maneuver Mr. Martinez's arm behind his body, Officer Findysz and Ms. Martinez try to take J.M. from Mr. Martinez, and Mr. Martinez makes a series of erratic movements while refusing to comply with repeated commands to release J.M. The erratic conduct that underlay this conviction occurred in response to the police officers' attempt to pull Mr. Martinez's arms behind his back. While it is clear that he did not obey the officers' instruction to let go of his son, nothing in his conduct suggested he was aware that his son was at risk of harm.

¶ 30 The State suggests that if this court finds that the evidence does not show that Mr. Martinez

acted with knowledge that his conduct was endangering his son, this court should reduce this conviction to one for the lesser-included misdemeanor offense of reckless conduct. 720 ILCS 5/12-5(a)(1) (West 2020). Mr. Martinez agrees that this is the right result, if the court finds that he acted recklessly. Mr. Martinez also advises the court that there is no need for a remand since both the charged crime and the lesser included offense of reckless conduct are eligible for the conditional discharge sentence that he received, and because he has successfully completed that sentence.

¶ 31 We agree that the evidence supports a conviction for reckless conduct. Recklessness is a less culpable mental state than knowledge. *People v. Fornear*, 176 Ill. 2d 523, 531 (1997). "A person commits reckless conduct when he or she, by any means lawful or unlawful, recklessly performs an act or acts that *** cause bodily harm to or endanger the safety of another person ***." 720 ILCS 5/12-5(a) (West 2020). Here, Mr. Martinez refused to adhere to the officers' request to let go of his son. Instead, he pulled away and tightened his grip. A reasonable trier of fact could find that although Mr. Martinez did not knowingly place his child at risk, he nevertheless recklessly disregarded the risk that his conduct was creating for the child. Thus, this court will exercise its authority under Illinois Supreme Court Rule 615(b)(3) to reduce this misdemeanor conviction to one for reckless conduct.

¶ 32 B. The One-Act, One-Crime Doctrine

¶ 33 Mr. Martinez next argues that his two convictions for resisting a peace officer violate the one-act, one-crime doctrine. Mr. Martinez acknowledges he did not preserve this claim for review, but he notes, correctly, that the error may be reviewed under the second prong of the plain error doctrine which allows for review of errors that affect "the integrity of the judicial process." *People v. Smith*, 2019 IL 123901, ¶ 14. His contention therefore is not procedurally barred.

¶ 34 Under the one-act, one-crime doctrine, "a criminal defendant may not be convicted of

multiple offenses when those offenses are all based on precisely the same physical act." *People v. Coats*, 2018 IL 121926, ¶ 11. While it is possible for a defendant to be convicted of multiple counts of resisting a peace officer, such convictions are appropriate when a defendant has committed multiple acts of resistance against multiple officers. See, *e.g.*, *People v. Floyd*, 278 Ill. App. 3d 568, 572 (1996) (the defendant's multiple convictions for resisting arrest upheld where the defendant committed at least four separate acts of resistance against four separate officers attempting an arrest). We review *de novo* whether a violation of the one-act, one-crime doctrine has occurred. *Coats*, 2018 IL 121926, ¶ 12.

¶ 35 Here, the State concedes that both counts of resisting a peace officer were based on Mr. Martinez's same physical act. We agree. Both counts identically charged that Mr. Martinez "knowingly resisted the performance of an authorized act within the officer[']s official capacity," namely, that he "refused *** numerous commands to put his hands behind his back" and "stiffened and refused to bring his arms behind him to be handcuffed, in [an] attempt to defeat an arrest." Both charges are based on the same, single act of resistance by Mr. Martinez during his arrest, with the only difference being that one complaint names Officer Findysz and the other names Officer Merrifield. Accordingly, we agree with the parties that Mr. Martinez's two convictions for resisting a peace officer violate the one-act, one-crime doctrine, and only one of them may stand.

¶ 36 Ordinarily, when two or more related offenses arise from the same conduct, only the conviction for the most serious offense is permitted. *People v. Price*, 221 Ill. 2d 182, 193 (2006). To determine the most serious offense, we consider the possible punishments and which offense has the more culpable mental state. *People v. Sapp*, 2022 IL App (1st) 200436, ¶ 76. When this court cannot determine the more serious offense, we will generally remand for the trial court to make that determination. See *id.* (remanding where the convictions carried identical penalties and

involved the same mental state).

¶ 37 In *Price*, two defendants were each charged with two counts of theft predicated on different sections of the theft statute but arising from a single incident. *Price*, 221 Ill. 2d at 185. One received concurrent terms of five years of imprisonment and the other received concurrent terms of two years of imprisonment. *Id.* Our supreme court rejected the defendants' argument that the verdicts were legally inconsistent, but found a one-act, one-crime violation because the convictions were "for the same conduct" and arose "from the same conduct." *Id.* at 193-94. As "the statutory penalty and the concurrent sentences actually imposed [were] identical," the supreme court concluded that remanding for further proceedings in the trial court "would unnecessarily tax judicial resources." *Id.* at 194-95. Noting the State conceded that a one-act, one-crime violation occurred and the defendants "expressed no preference" as to which sentences should be vacated, the supreme court therefore vacated one of the defendants' sentences for theft. *Id.*

¶ 38 Here, as in *Price*, Mr. Martinez received identical concurrent sentences of conditional discharge for the same offense based on the same conduct. Neither he nor the State has expressed a position as to which conviction should be vacated. Therefore, in the interest of expediency and the conservation of judicial resources, this court elects to vacate defendant's conviction for resisting a peace officer as to Officer Findysz. See Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967).

¶ 39 In reaching this conclusion, we observe that Mr. Martinez, in his brief on appeal, states that he has completed his concurrent sentences of conditional discharge. Our supreme court has held that a defendant's completion of a sentence renders moot a challenge to that sentence, but does not moot a challenge to the conviction because "[n]ullification of a conviction may hold important consequences for a defendant." *In re Christopher K.*, 217 Ill. 2d 348, 359 (2005). Further, as explained, Mr. Martinez's convictions for two counts of resisting a peace officer violated the one-

act, one-crime doctrine, which, under the second prong of plain error analysis, implicates "the integrity of the judicial process." *Smith*, 2019 IL 123901, ¶ 14.

¶ 40 IV. CONCLUSION

¶ 41 For the foregoing reasons, we reduce Mr. Martinez's conviction for child endangerment to one for reckless conduct and vacate one of his convictions for resisting a peace officer.

¶ 42 Affirmed as modified and vacated in part.