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2012 IL App (3d) 100305-U

Order filed March 8, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the Circuit Court
) of the 10th Judicial Circuit,
Plaintiff-Appellee,) Peoria County, Illinois,
)
v.) Appeal No. 3-10-0305
) Circuit No. 09-CM-2655
CHRISTOPHER KALPEDIS,)
) Honorable
Defendant-Appellant.) Katherine Gorman,
) Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Schmidt and Justice Holdridge concurred in the judgment.

ORDER

- ¶ 1 *Held:* The evidence, when examined in the light most favorable to the State, was sufficient to convict the defendant of resisting a police officer.
- ¶ 2 After a jury trial, the defendant, Christopher Kalpedis, was convicted of resisting a police officer. 720 ILCS 5/31-1(a) (West 2008). He was sentenced to six months' conditional discharge and ordered to pay various costs. On appeal, he argues that the State failed to prove him guilty of the offense beyond a reasonable doubt. We affirm.

¶ 3

FACTS

¶ 4 On December 9, 2009, the defendant was charged with resisting a peace officer in that "he knowingly *** moved his body in a manner that interfered with [an officer's] ability to detain him." At the defendant's trial, Officer John Briggs testified on behalf of the State. Briggs testified that on May 17, 2009, he was employed in Peoria as a police officer, and on that date he responded to a call outside of a nightclub called Hydrate. When he arrived, he saw 30 to 35 individuals standing outside of the nightclub. Briggs told the crowd to disperse, but no one responded. At some point, he noticed the defendant arguing with one of Hydrate's bouncers.

¶ 5 Briggs informed the defendant that he had to leave the area immediately. The defendant turned to look at Briggs, then continued to argue with the bouncer. Briggs put the defendant in a "straight-arm-hold" technique, and escorted him away from the sidewalk and into the street. The defendant then turned his body in an "aggressive nature" and tried to grab Briggs with his left arm. Briggs testified that, at that point, the defendant was being escorted away from the crowd, and he was not under arrest.

¶ 6 Briggs further stated that after the defendant aggressively turned toward him, Officer Christopher White arrived. Since the defendant was not following Briggs's instructions, he was placed under arrest. Each officer had one of the defendant's arms, and they instructed the defendant to put his hands behind his back several times. The defendant refused, and "began to tense his body, and pull his arms into his body[.]" As the defendant was being escorted into the street, he continued to try and pull away. The officers then had to place him against a car, with his stomach facing the car. Briggs testified that the defendant:

"Continue[d] to resist by tensing his body, and he beg[an] to pull his arms back forward

towards his inner body which [was] harder for us to control. At that point and [sic] time[,] he turn[ed] right which would have been towards me, and pull[ed] his body off the car and beg[an] to push off the car."

¶ 7 As the defendant turned toward Briggs, the officer used a "straight-arm takedown" to take the defendant to the ground, with his stomach facing the ground. The defendant was arrested, offering "little to no resistance after that." Briggs then examined the defendant and noticed a laceration and swelling above his eye. The defendant was transported in an ambulance to St. Francis Hospital.

¶ 8 White testified that he was employed as a police officer and weighed 222 pounds. When he arrived on the scene, he saw a group of about 30 to 35 people standing outside of Hydrate. He also saw Briggs escorting the defendant in a straight-arm technique from the rest of the group, and the defendant was attempting to pull away from Briggs's grasp. Specifically, White recalled that the defendant turned his body toward Briggs.

¶ 9 Upon seeing Briggs, White ran up to the defendant and grabbed the defendant's left arm, and the defendant tried to pull his arm from Briggs's grasp. White and Briggs escorted the defendant toward a parked car, and pushed him against the vehicle. The defendant pulled his left arm toward his body, and turned toward Briggs. At that point, he was taken to the ground. When White was asked how the defendant managed to turn toward Briggs when he was already pushed against the car, White responded, "[w]ell, he kind of bumped off the car, and at the same time turned his body."

¶ 10 After the officers testified, the defendant moved for a directed verdict. The trial court initially granted the defendant's motion, stating that:

"in listening to the evidence, the defendant was engaged in a discussion with the bouncer,

and Officer Briggs appeared on the scene; he was instructed to leave the area, and had him in a straight-arm hold; and moved him towards the street. According to Officer Briggs he moved in an aggressive nature, and Officer White was also there.

Based on the evidence and what actually transpired, I am going to direct a verdict and find in favor of the defendant."

¶ 11 The State then argued that the trial court had to review the defendant's motion in the light most favorable to the State. The trial court revised its ruling, and recalled that Briggs testified that the defendant "turned his body in an aggressive manner[.]"

¶ 12 The defendant testified on his own behalf. He stated that he was part of the City Heat Motorcycle Club, a group of different individuals such as law enforcement officers, professionals, and tradesmen. On the day before the incident, he had ridden to Peoria with this motorcycle club, and arrived around 6 or 6:30 p.m. He checked into his hotel, ate dinner, and rested for a while before going out for the evening. He had approximately two drinks at a bar, and then went across the street to another bar where he ordered a drink that he did not finish.

¶ 13 The defendant then went outside to smoke a cigarette, and he heard a "big commotion going on to the doorway to my left." He saw two white men holding on to a younger black male. The defendant continued to observe the struggle, "just to be there in case something were to happen to the gentleman." The bouncers began yelling at the defendant, but the defendant continued to stand there and observe.

¶ 14 The defendant testified that he was suddenly grabbed from behind, flung to his knees, and pushed to the ground, and his arm was pulled behind his back with an officer telling him he was under arrest. He suffered injuries to his knees, eye, and arm, and he was taken to the hospital where

he refused treatment. The defendant also stated that his prior medical ailments consisted of a cracked lower vertebrae, a torn rotator cuff, and two herniated discs. At the time of the incident, the defendant was 53 years old.

¶ 15 The jury found the defendant guilty. The trial court sentenced the defendant to six months' conditional discharge and various costs. The defendant appealed.

¶ 16 ANALYSIS

¶ 17 On appeal, the defendant argues that the evidence was insufficient to convict him of resisting a police officer. Specifically, he contends that the State's evidence was incredible, and therefore we should reverse the defendant's conviction.

¶ 18 When a defendant challenges the sufficiency of the evidence supporting his conviction, a reviewing court must determine whether, when viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 214 Ill. 2d 206 (2005). Upon review, the trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Ross*, 229 Ill. 2d 255 (2008). We will set aside a defendant's conviction only when we find the evidence was insufficient or so improbable or unsatisfactory that a reasonable doubt exists as to the defendant's guilt. *People v. Ortiz*, 196 Ill. 2d 236 (2001).

¶ 19 To sustain a conviction for resisting a peace officer, the State was required to prove that the defendant knowingly resisted or obstructed a peace officer in the execution of any authorized act within his official capacity. 720 ILCS 5/31-1(a) (West 2008). The statute "prohibits a person from *** committing a physical act of resistance or obstruction—a physical act that impedes, hinders,

interrupts, prevents or delays the performance of the officer's duties, such as going limp, forcefully resisting arrest, or physically helping another party to avoid arrest." *People v. McCoy*, 378 Ill. App. 3d 954, 962 (2008). In addition, "[t]he acts of struggling or wrestling with a police officer are physical acts of resistance that will support a conviction for resisting a peace officer, even if the underlying attempted arrest is unwarranted." *Id.*

¶ 20 The defendant argues that the officers' testimony regarding their arrest of the defendant was implausible given the defendant's physical condition. He contends that it is simply impossible to believe that a 53-year-old man with several preexisting injuries could overpower two trained police officers who had the defendant pinned against a vehicle. We disagree. While it might have been difficult for the defendant to perform such a maneuver, we do not find that the testimony was so insufficient, improbable, or unsatisfactory that a reasonable doubt exists as to the defendant's guilt. Moreover, even if the officers were to be disbelieved on that point, they also testified that the defendant tried to pull away after he was under arrest and while he was being escorted to the vehicle. There was no indication from the defendant's testimony that his physical ailments would prevent him from trying to pull away.

¶ 21 In addition, determinations of witness credibility are the responsibility of the trier of fact, not the reviewing court. *People v. Agnew-Downs*, 404 Ill. App. 3d 218 (2010) (although the defendant argued that the arresting officer's testimony regarding resisting arrest was not credible, such a determination was the responsibility of the fact finder). When the defendant offered a conflicting version of what occurred, "it was for the trier of fact to determine which version of events to believe." *Id.* at 228. Evidently, the trier of fact found the officers to be more credible than the defendant, and in reviewing their testimony in the light most favorable to the State, we agree that a

rational fact finder could find beyond a reasonable doubt that the defendant resisted arrest. *Id.*

¶ 22

CONCLUSION

¶ 23 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 24 Affirmed.