2016 IL App (2d) 140694-U
No. 2-14-0694
Order filed October 18, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. FREDERICO SOLORZANO, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 13-CF-617 Honorable John A. Barsanti, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Schostok and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State proved defendant guilty beyond a reasonable doubt of felony resisting a peace officer: defendant's conduct was the proximate cause of the officers' injuries, as it was reasonably foreseeable that, in attempting to subdue defendant, who was struggling violently in close quarters, the officers would be injured; it was irrelevant that the precise manner of injury might have been unforeseeable; (2) the State failed to prove defendant guilty beyond a reasonable doubt of obstructing identification: although he gave the officers a false name, there was no evidence that he was lawfully detained when he did so.

¶ 2 Following a jury trial, defendant, Frederico Solorzano, was convicted of aggravated battery (720 ILCS 5/12-3.05(d)(4) (West 2012)), two counts of felony resisting a peace officer (720 ILCS 5/31-1(a-7) (West 2012)), and obstructing identification (720 ILCS 5/31-4.5(a) (West

2012)). Resisting was charged as a felony because two officers were allegedly injured as a result of defendant's conduct. He appeals, contending that he was not proved guilty beyond a reasonable doubt of resisting. He contends that the officers' misuse of their weapons was the sole proximate cause of their injuries. He also contends that he was not proved guilty beyond a reasonable doubt of obstructing identification, given that he was not being lawfully detained at the time. We affirm in part and reverse in part.

¶ 3 Evidence at trial showed that, on April 7, 2013, Elgin police officers Joshua Miller and Robert Henke went to 401 E. Chicago Street to investigate a complaint. They knocked on the door and Victor Velazquez answered. The officers also spoke to a man who identified himself as Rico Elvarez. Miller identified the second man in court as defendant.

¶ 4 According to Henke, defendant was technically free to leave at that point. Had he attempted to walk out of the apartment, Henke would have allowed him to leave.

¶ 5 When the officers wrapped up their investigation, Miller returned to his squad car and ran Elvarez's name through the computer. No information was available for that name. Miller eventually learned defendant's true name, and discovered that there was a warrant for his arrest.

¶ 6 Sergeant Zach McCorkle arrived to assist, and the three officers returned to the apartment to arrest defendant on the warrant. When the officers returned to the apartment, they discovered defendant standing naked in a back bedroom. Miller told him to get dressed. Defendant came into the living room and put his shorts and socks on. He kept asking what this was about.

¶ 7 Defendant began walking toward the kitchen, saying he needed to get his phone. McCorkle grabbed his left arm, telling him that he was under arrest. Defendant pulled his arms toward his body. Miller assisted McCorkle in getting defendant onto a couch. After defendant

was on the couch, Miller told him several times to put his hands behind his back, but defendant refused. Defendant stood up again, and Miller and McCorkle tackled him onto a love seat.

¶ 8 McCorkle unholstered his Taser and delivered a "drive stun" to defendant's left buttock. This appeared to have no effect on defendant, who continued to ignore the officers' commands. McCorkle then attempted to fully deploy his Taser. Miller and Henke released defendant so that McCorkle could hit him with the Taser. McCorkle inserted a cartridge containing the barbs into the Taser. However, the Taser did not have a sufficient charge to fire properly, and the barbs shot into McCorkle's hand. Defendant then grabbed Miller around the waist, picked him up, and pushed him into a wall. Miller felt pain in his upper body and, after he fell to the floor, in his right hip.

¶ 9 Defendant initially landed on top of Miller, then got up and ran out of the apartment. Miller ran after defendant, eventually tackling him in the hallway. Defendant got to his feet once more, but Miller and Henke got him back on the ground. Henke lay on top of him, but defendant still would not place his hands behind his back.

¶ 10 Miller got out his pepper spray and sprayed defendant in the face and eyes. The spray also hit Henke. Miller and Henke were then able to handcuff defendant.

¶ 11 The jury found defendant guilty of aggravated battery to Miller and felony resisting as to Henke and McCorkle, as well as obstructing identification. The trial court sentenced him to seven years' imprisonment for aggravated battery, with concurrent sentences of three years for each resisting count. No sentence was imposed for obstructing identification. Defendant timely appeals.

¶ 12 Defendant first contends that he was not proved guilty beyond a reasonable doubt of felony resisting. He argues that the officers' careless use of their weapons, not his resistance, was the proximate cause of their injuries.

¶ 13 Defendant challenges the sufficiency of the evidence. When a defendant makes such a challenge, the question is whether, after viewing all the evidence in the light most favorable to the State, any rational trier of fact could have found, beyond a reasonable doubt, the fact in question. *People v. Lee*, 213 Ill. 2d 218, 225 (2004). To prove defendant guilty of resisting, the State had to establish that he resisted or obstructed the performance by someone he knew to be a peace officer of an authorized act within his official capacity. 720 ILCS 5/31-1(a) (West 2014). The offense becomes a Class 4 felony if the offender's conduct "was the proximate cause of an injury to a peace officer." 720 ILCS 5/31-1(a-7) (West 2014). A defendant's conduct need not be the sole proximate cause of an officer's injuries. *People v. Cervantes*, 408 Ill. App. 3d 906, 908 (2011).

¶ 14 The supreme court has noted:

> "The term 'proximate cause' describes two distinct requirements: cause in fact and legal cause. [Citation.] We have stated, 'We believe that the analogies between civil and criminal cases in which individuals are injured or killed are so close that the principle of proximate cause applies to both classes of cases. Causal relation is the universal factor common to all legal liability.' [Citation.] Legal cause 'is essentially a question of foreseeability'; the relevant inquiry is 'whether the injury is of a type that a reasonable person would see as a likely result of his or her conduct.' [Citation.] Foreseeability is added to the cause-in-fact requirement because 'even when cause in fact is established, it must be determined that any variation between the result intended *** and the result

> actually achieved is not so extraordinary that it would be unfair to hold the defendant responsible for the actual result.' [Citation.]" *People v. Hudson*, 222 Ill. 2d 392, 401 (2006).

Furthermore, where it could be reasonably foreseen that some injury might result from the act, it is not essential to foresee the precise consequences that actually resulted, nor is it necessary to foresee the exact particulars of the injury that actually occurred. *Moran v. Lala*, 179 Ill. App. 3d 771, 784-85 (1989).

¶ 15 Defendant does not specify whether he is challenging legal cause or cause in fact. The officers deployed their weapons while trying to forcibly arrest defendant. It is clear that, but for his resistance, the officers would not have been injured. Thus, the question becomes whether it was reasonably foreseeable that the officers would be injured as a result of defendant's resistance.

¶ 16 In *Cervantes*, the defendant was convicted of felony resisting after he ran from officers trying to arrest him and led them on a foot chase through snow-covered fields. One of the officers was injured when he slipped on ice and again while climbing a fence. The defendant contended that the weather conditions, not his actions, caused the officer's injuries. We rejected that contention, holding that it was reasonably foreseeable that an officer might be injured while chasing the defendant in adverse weather conditions. *Cervantes*, 408 Ill. App. 3d at 909-10.

¶ 17 A similar result is appropriate here. It was reasonably foreseeable that when the officers were forced to subdue defendant, who was struggling violently in close quarters, the officers might be injured. We acknowledge that they were injured by their own weapons. However, Henke was hit with the pepper spray because he was on top of defendant attempting to subdue

him. McCorkle was injured because he was forced to fire the Taser at close range. It does not matter that the precise manner of injury was unforeseeable. *Moran*, 179 Ill. App. 3d at 784-85.

¶ 18 We agree with defendant, however, that his conviction of obstructing identification must be reversed. Defendant was convicted under a statute that proscribes knowingly furnishing "a false or fictitious name *** to a peace officer who has *** lawfully detained the person." 720 ILCS 5/31-4.5(a)(2) (West 2014). Defendant contends that there was no evidence that the officers had lawfully detained him when he gave them the admittedly fictitious name Rico Elvarez. He notes that the evidence showed only that the officers went to 401 E. Chicago to investigate a complaint. There was no evidence about the nature of the complaint or whether defendant was even a suspect. Moreover, Henke testified that defendant was in fact free to leave.

¶ 19 The State responds that the evidence showed that the officers went to the apartment to investigate and that they knew that individuals in the apartment were involved in the crime they were investigating. The State's argument on this point does not cite any specific evidence in the record but, in any event, evidence that the officers were "investigating" and that one or more people in the apartment might have been involved in whatever the officers were investigating falls far short of establishing that the police had reasonable grounds for a *Terry* stop (see *Terry v. Ohio*, 392 U.S. 1 (1968)), or that they were even conducting one. Indeed, Henke testified that defendant was free to leave at that point and that, had he attempted to walk out the door, he would have been allowed to do so. Henke's subjective intent is certainly not dispositive of the issue whether defendant was being detained. See *People v. Smith*, 214 Ill. 2d 338, 355 (2005) (officers' objective conduct is relevant to determining whether a seizure has occurred, not their subjective intentions). Nevertheless, the State can point to no objective evidence that defendant

was in fact being detained. As there was no evidence that defendant was being lawfully detained when he gave the police a false name, we reverse his conviction of obstructing identification.

¶ 20 The judgment of the circuit court of Kane County is affirmed in part and reversed in part. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978). Because no sentence was imposed for the obstructing identification conviction, there is no need to remand for resentencing

¶ 21 Affirmed in part and reversed in part.