2016 IL App (2d) 150059-U
No. 2-15-0059
Order filed October 31, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kendall County.
Plaintiff-Appellee,	)	
v.	)	No. 14-CM-159
ANTHONY WILLIAMSON,	)	Honorable Stephen L. Krentz,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly ruled that defendant failed to provide evidence sufficient to raise a claim of self-defense as to a charge of resisting a peace officer: there was no evidence that defendant's belief that he was threatened with unlawful force was objectively reasonable, as there was no indication that the officer would have used anything but lawful force to compel defendant's compliance with his orders.

¶ 2 Defendant, Anthony Williamson, appeals from his conviction of resisting a peace officer (720 ILCS 5/31-1(a) (West 2014)). The issue on appeal is whether defendant presented sufficient evidence that he acted in self-defense such that the trial court erred in failing to require the State to disprove defendant's affirmative defense beyond a reasonable doubt. Because we

find that defendant did not present sufficient evidence of self-defense, we find no error and thus we affirm.

¶ 3 I. BACKGROUND

¶ 4 On March 3, 2014, defendant was charged by complaint with violating section 31-1(a) of the Criminal Code of 2012, which provides that one who "knowingly resists or obstructs the performance by one known to the person to be a peace officer *** of any authorized act within his official capacity commits a Class A misdemeanor." *Id*. The complaint alleged that defendant knowingly resisted a peace officer "by actively pulling away from [the officer] while [the officer] attempted to handcuff said defendant and said defendant refused to comply with verbal orders."

¶ 5 The following relevant testimony was presented at defendant's bench trial. Robert Lechowicz, a deputy with the Kendall County sheriff's office, testified that, on March 2, 2014, at about 9:28 p.m., he arrived at 405 Sunshine Court in Oswego to serve paperwork on Alexander Sullivan. He parked in front of a neighboring residence and turned off his police car. As he approached the residence, while at the bottom of the driveway, he smelled cannabis. There were three cars parked in the driveway: two on the right side, one on the left. He called for backup. He continued approaching the residence, walking up the center of the driveway. Defendant emerged from the driver's side of the car that was parked on the left side of the driveway. Defendant walked toward Lechowicz and asked him what he was doing on defendant's property. Lechowicz told defendant that he was looking for Alexander Sullivan. Defendant responded that he did not know Alexander Sullivan, that he was not there, and that Lechowicz should leave. Lechowicz asked defendant for his identification to see if he was Sullivan. Defendant did not produce his identification.

¶ 6 Lechowicz testified that he and defendant were standing at the rear of the vehicle and that the driver's door was open. Lechowicz could smell marijuana. Defendant told Lechowicz to "get the fuck off his property." Lechowicz could see another individual in the vehicle. Lechowicz asked defendant whether there were any drugs in the vehicle, and defendant's demeanor changed. Defendant "appeared to be nervous, he looked around, he looked inside the vehicle and turned his back on [Lechowicz] and began to walk away." Lechowicz told defendant that he was not free to leave and that he was going to be detained so that Lechowicz could investigate the smell. Defendant told Lechowicz that "he's not gonna deal with [his] shit and began to walk away." Lechowicz grabbed defendant's right arm and defendant pulled away. Lechowicz was behind defendant so he "grabbed him from behind in a bear hug fashion, around both arms." Defendant pulled away. Lechowicz pulled him to an open area behind the vehicle. Lechowicz let go of one of defendant's hands so that he would have a free hand. Defendant spun around and pulled away from Lechowicz's right hand. Defendant was standing face-to-face with Lechowicz. Lechowicz told him to turn around and place his hands behind his back. Defendant refused, saying that he had not done anything wrong. Lechowicz grabbed defendant's left arm with his left arm and used a straight-arm takedown to get defendant to the ground.

¶ 7 Lechowicz testified further that, as soon as defendant hit the ground, he used his right hand as a brace and started to stand back up. Lechowicz had him in a bear hug and did a leg sweep to get defendant back on the ground. He lay on defendant's back and called for backup. The individual in the vehicle exited the vehicle. Lechowicz and defendant "continued wrestling around" as Lechowicz attempted to handcuff defendant. Lechowicz had to grab defendant's arm with both of his arms to get it behind his back. Two people came out of the house and started

screaming at him and someone was filming with a camera phone. Defendant started laughing as Lechowicz told him to stop resisting.

¶ 8 Defendant testified that, on March 2, 2014, he and his girlfriend, Lisa, entered his car, which was located in the driveway of his mother's home where he lived. He entered the car, and within 30 seconds he saw Lechowicz pull up in a squad car. Defendant watched Lechowicz exit his car and approach defendant's house. Defendant exited his car and calmly asked Lechowicz what was going on. Lechowicz told defendant that he was there to serve papers on Alexander Sullivan. Defendant told him that Sullivan was his cousin but that he no longer resided there. He told Lechowicz that Sullivan lived in the Bolingbrook/Joliet area. Lechowicz asked defendant for his identification. Defendant removed his identification from his wallet located inside his car. With his identification in his hand, defendant asked Lechowicz why he needed to show him his identification. At that point, Lechowicz called for backup, and defendant said, "[A]re you serious?" Lechowicz responded, "yeah, I'm serious," and he "walked up on [defendant]." Defendant backed up and told Lechowicz that he was going to get his mother. Defendant thought that Lechowicz was "gonna put his hands on [him]." Defendant moved away because he "felt threatened."

¶ 9 Defendant testified further that, once he said that he was going to get his mother, Lechowicz said, "[Y]ou're not going anywhere." Lechowicz "approached [him] and walked up on [him] and grabbed [him] with both his hands on [his] shoulders and he slammed [him]." Defendant testified that he was six feet tall and that Lechowicz was taller. Defendant stated, "I submitted to him 'cause I wasn't gonna fight a police officer." Lechowicz slammed him to the ground. Defendant was on his stomach, and Lechowicz was on top of him. Defendant testified that the driveway was "completely icy" so he was unable to put his head on the ground.

Defendant testified that he did not resist the officer. He said that the officer was wrestling with him. Defendant testified that he placed his hands behind his back.

¶ 10 Four other individuals testified on behalf of defendant. Lisa Goodwin, defendant's girlfriend, testified that she was sitting in the passenger seat of defendant's vehicle when Lechowicz approached. She testified that she heard defendant speaking calmly with Lechowicz. She saw defendant retrieve his identification and heard him ask Lechowicz why he need to show him his identification. She heard Lechowicz raise his voice at defendant and heard defendant say that he was going to get his mother. She heard Lechowicz say, "you're not going anywhere" and saw him grab defendant by the shoulders. By the time she exited the car and began filming with her cell phone, Lechowicz had defendant face down on the icy driveway.

¶ 11 Aiyla Williamson, defendant's sister, and Pamela Sullivan, defendant's mother, each testified that they were at home when Lechowicz arrived. They did not hear anything until they exited the home to go get something to eat. They saw Lechowicz on top of defendant. Defendant had his upper body lifted up so his face would not be on the ice. He was not doing anything out of the ordinary.

¶ 12 Peggy Bendowski, defendant's next-door neighbor, testified that she was watching TV near her front window when she saw a police car park in front of her house. She saw Lechowicz approach the passenger side of defendant's vehicle. She heard Lechowicz talking loudly and she saw defendant exit the vehicle. She heard them talking back and forth. Defendant's voice was "low"; he was not yelling. She heard defendant say, "no, no, no or no." She saw Lechowicz grab defendant's "arm or something and they were struggling back and forth." Then defendant was on the ground.

¶ 13 During closing argument, defense counsel argued that, although a person being arrested has no right to resist the arrest, even if it is an unlawful arrest, this rule does not apply to situations where an officer uses excessive force. Counsel argued that Lechowicz used excessive force. Nevertheless, he stated:

> "The reason I say I'm a little uncomfortable bringing this up is because my client didn't do anything to defend himself. He basically submitted to the officer's body weight, to the leg sweep, to the slamming to the icy ground.
>
> You heard his mother—his mother or sister saying that he was trying to hold his body up and his face from being smashed to the ice. They were afraid he was gonna get cut.
>
> So, you have a situation here where it's not per se self defense, but this is certainly an excessive force situation."

¶ 14 On November 4, 2014, in its written order, the trial court found defendant guilty of resisting a peace officer in that he "physically resisted the officer's efforts to forcibly detain him, and that in doing so, he knowingly obstructed the authorized performance of a peace officer in his official capacity." The court found that Lechowicz told defendant that he was not free to go. When defendant disregarded this instruction, Lechowicz "was justified in using force to effectuate a seizure of the Defendant's person for the limited purpose of his ongoing investigation into the alleged criminal conduct then taking place." The court further found that any appearance of resistance from defendant while on the ground was "to keep his face off of the ice and snow and not to resist the officer's efforts to detain him." Thus the court found "that any alleged criminal conduct on the Defendant's part is limited to the actions that took place prior to and in the context of the officer first taking the Defendant down to the ground."

¶ 15 In his motion to reconsider, defendant argued, *inter alia*, that the State failed to prove all of the elements of the offense beyond a reasonable doubt and further failed to prove beyond a reasonable doubt that defendant did not act in self-defense.

¶ 16 In denying the motion to reconsider, the trial court found that the evidence was sufficient to prove defendant guilty beyond a reasonable doubt. In considering the self-defense argument, the court found that there was not "sufficient evidence raised or suggested or proven at trial that would in any way obligate the State to respond with a shifted burden to disprove that beyond a reasonable doubt."

¶ 17 The trial court sentenced defendant to 12 months' conditional discharge and two days in jail with credit for time served. Defendant timely appealed.

¶ 18 II. ANALYSIS

¶ 19 Defendant argues that, because he presented "at least a slight amount of evidence suggesting the excessive use of force by an officer," the trial court erred in failing to shift the burden of proof to the State to disprove defendant's affirmative defense of self-defense. The State responds that the trial court did not need to require the State to disprove a claim of self-defense, because defendant did not use force against Lechowicz and because there was not slight evidence on all the elements of self-defense. We agree with the State.

¶ 20 Resisting a peace officer occurs when a person "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." *Id.* "[T]he use of excessive force by a police officer invokes the right of self-defense." *People v. Haynes*, 408 Ill. App. 3d 684, 690 (2011). "A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of

unlawful force." 720 ILCS 5/7-1 (West 2014). Self-defense is an affirmative defense, and unless the State's evidence raises the issue, the defendant must present some evidence as to *each* of the elements of the defense. *People v. Everette*, 141 Ill. 2d 147, 157 (1990). "The elements of self-defense are: (1) that unlawful force was threatened against a person; (2) that the person threatened was not the aggressor; (3) that the danger of harm was imminent; (4) that the use of force was necessary; (5) that the person threatened actually and subjectively believed a danger existed that required the use of the force applied; and (6) the beliefs of the person threatened were objectively reasonable." *People v. Lee*, 213 Ill. 2d 218, 225 (2004). Once a defendant raises the affirmative defense, the State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense, in addition to proving the elements of the charged offense. *Id.* at 224-25. "In a bench trial, it is for the trial judge to determine the credibility of the witnesses and the weight to be given their testimony. Unless the evidence is so unsatisfactory as to raise a serious doubt of the defendant's guilt, the finding of the trial court will not be disturbed." *People v. Coogler*, 35 Ill. App. 3d 176, 178 (1975).

¶ 21 Here, Lechowicz and defendant presented somewhat different versions of the events; however, even under defendant's version, defendant did not put forth slight evidence sufficient to raise the affirmative defense of self-defense. Although the State emphasizes the lack of evidence to show that defendant used *any* force against Lechowicz (given defendant's testimony that he "submitted" to Lechowicz), we find more persuasive the lack of evidence to support a finding that defendant's belief that he needed to defend himself from the imminent use of unlawful force, *i.e.*, excessive force, was objectively reasonable.

¶ 22 Defendant testified that, when he saw Lechowicz approach, he exited his car and calmly asked Lechowicz what was going on. Defendant calmly responded to Lechowicz's inquiry about

Sullivan. Defendant retrieved his wallet from the car when asked to produce his identification; however, he admitted that, rather than producing his identification as requested, he asked Lechowicz why he had to do so. Lechowicz called for backup, and defendant asked if Lechowicz was serious. According to defendant, at this point, Lechowicz "walked up on [him]" and told him that he was serious, and defendant backed up because "he felt threatened" and he thought that Lechowicz was "gonna put his hands on [him]." When he backed up, he told Lechowicz that he was going to get his mother. Lechowicz then grabbed defendant and took him to the ground.

¶ 23 Even if this testimony was sufficient evidence that defendant actually and subjectively believed that he was in danger of harm resulting from the imminent use of unlawful force, there was no evidence to support a finding that defendant's belief was objectively reasonable. Prior to Lechowicz's use of force, Lechowicz did nothing more than ask him about Sullivan and then ask him to produce his identification. Defendant admitted that he did not produce his identification as requested and that he instead indicated to Lechowicz that he was going to get his mother. Thus, Lechowicz's use of force was in response to defendant's resistance, not the other way around. There is nothing in defendant's testimony to even remotely suggest that anything other than lawful force would have followed his refusal to comply with Lechowicz's orders. Indeed, had defendant cooperated, no force would have been necessary.

¶ 24 Based on this testimony, we find that there was no evidence that defendant's belief that he was in imminent danger of unlawful force, *i.e.*, excessive force, was objectively reasonable. Therefore, we find no error in the trial court's finding that defendant did not raise sufficient evidence of self-defense. See *id.* at 179 (affording deference to the trial court and finding no error in the court's rejection of the defendant's claimed defense of compulsion).

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the judgment of the circuit court of Kendall County. 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).

¶ 27 Affirmed.