2017 IL App (1st) 162106-U

THIRD DIVISION
February 1, 2017

No. 1-16-2106

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF	)	Appeal from the
	)	Circuit Court of
NAJE W., a minor	)	Cook County.
	)	
Respondent-Appellant.	)	14 JD 801
	)	
	)	The Honorable
	)	Terrence V. Sharkey,
	)	Judge, presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: Evidence was sufficient to sustain respondent's adjudication because the State provided ample evidence that would lead a rational trier of fact to determine respondent resisted a peace officer. In addition, respondent is not entitled to a new hearing under the plain error doctrine. We affirm.

¶ 2 Following an adjudication hearing, respondent Naje W. was found delinquent of resisting a peace officer (720 ILCS 5/31-1(a) (West 2014)). Respondent was then sentenced to 18 months' probation and 20 hours of community service. On appeal, respondent contends that the State's evidence was insufficient to prove him delinquent of resisting a peace officer beyond a

reasonable doubt. In addition, respondent contends that his right to due process was violated because his parent and custodian were not properly notified of the adjudication hearing and sentencing. We affirm.

¶ 3 BACKGROUND

¶ 4 We recite only those facts necessary to understand the issues raised on appeal. On March 19, 2016, seventeen-year-old respondent resisted a peace officer after being detained for an alleged burglary[1]. The State filed a petition for adjudication of wardship, listing respondent's address at 5150 Emerald in Chicago (Emerald address). In addition, the petition listed respondent's father Dennis Lee who lived at 7938 South Bishop in Chicago (Bishop address). On April 11, 2016, a notice to appear in court was sent out, but respondent failed to appear. A few days later, when respondent appeared in court with his father, he explained that he missed his initial court date because his dad was struggling with bone cancer. Respondent also stated that he currently resided with his dad at the Bishop address, but his grandmother and adoptive parent, Mae Lee Williams, lived at the Emerald address. Thus, the court listed Lee as respondent's custodian and Williams as his legal guardian. On May 9, 2016, Williams was served with a summons, indicating that the next court date was scheduled for May 24, 2016. Respondent appeared alone and relayed to the court that Lee told respondent to come by himself because he was now eighteen-years-old. After discussion, all parties agreed that service was complete. Nonetheless, the hearing was continued until June 28, 2016, because the State's witnesses were unavailable.

¶ 5 At the June adjudication hearing, both parties and the circuit court agreed to proceed without a parent because Lee had previously appeared in court and Williams was served by substitute service. Respondent also indicated that he was comfortable proceeding without a

[1] The burglary charge is not at issue on appeal.

parent. Therefore, the State called Chicago Police Department (CPD) Officer Craig Coughlan to testify.

¶ 6 Officer Coughlan testified that he had been an officer for 20 years. On the day of the incident, a sergeant directed him and his partner Officer Steve Lipkin to respond to a burglary. When they arrived at the Emerald address with several other CPD officers, respondent allowed the officers into the residence. Officer Coughlan then observed a couch, which respondent said "he bought from a 'shorty' for $40 dollars, [even though] he knew it was taken in a burglary." Officer Coughlan then placed respondent under arrest. But when Officer Coughlan tried to handcuff respondent, he "pulled away, started yelling, started flailing his legs, flailing his arms, [and] stiffening." Officer Coughlan continuously told respondent, who was yelling, to stop resisting and fighting. The struggle lasted for approximately two minutes. Officer Lipkin also tried to assist in securing respondent's right arm behind his back so Officer Coughlan could handcuff him. Finally, Officer Coughlan was able to use a control tactic called "an arm bar," which meant "you gain[ed] control of the offender's arm, plac[ed] it behind his back by using *** force, appl[ied] a handcuff to the wrist, and then appl[ied] pressure while *** shouting verbal commands." It took approximately five orders to get the handcuffs on respondent. Officer Coughlan then transported respondent to the precinct for processing.

¶ 7 On cross-examination, Officer Coughlan testified that he announced his status as a CPD officer before respondent opened the door. Officer Coughlan acknowledged that the case report, arrest report and supplemental report, did not specifically state that respondent "kicked," "flailed his arms," or "yelled" during the arrest. Officer Coughlan did not recall whether he was given details of the offenders prior to the arrest. On redirect examination, Officer Coughlan indicated he personally authored the arrest report, a "summary report" that stated respondent "resisted

arrest." On re-cross-examination, Officer Coughlin noted that numerous individuals resisted arrest throughout his career, but he did not know the exact number. He also recalled that there was "some indication of struggling," in the supplemental report.

¶ 8 The State rested and defense counsel moved for a directed verdict. The circuit court denied the request and the defense rested with respondent waiving his right to testify. After hearing arguments, the circuit court found respondent guilty of resisting a peace officer. The court noted that "yelling [was] not resisting arrest. It [was] the physical motion of the minor respondent with such force that the officer was forced to use his arm bar *** before he could get the cuffs on that constitute[ed] in my mind an act of physical resistance that [met] the statute requirement for resisting a peace officer." The court also observed that Officer Coughlan was not impeached because, although certain details were left out of the police reports, these reports were summaries. At sentencing, the circuit court observed that Lee was in the hospital and concluded, along with both parties, that service was again complete. Respondent was then sentenced to 18 months' probation and 20 hours of community service. The court further required respondent to maintain a C average in school and attend drug and alcohol counseling. Respondent then filed this timely appeal.

¶ 9 ANALYSIS

¶ 10 On appeal, respondent contends the State's evidence was insufficient to prove him delinquent of resisting a peace officer beyond a reasonable doubt. Where, as here, a respondent challenges the sufficiency of the evidence to sustain his adjudication, the question for the reviewing court 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 were proven beyond a reasonable doubt. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). An

adjudication will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the respondent's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In a bench trial, the trial judge has the responsibility to determine the credibility of the witnesses, to weigh the evidence and draw reasonable inferences from the evidence. *People v. Little*, 322 Ill. App. 3d 607, 618 (2001). We will not substitute our judgment for that of the trier of fact on these matters. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009).

¶ 11 To sustain an adjudication for resisting a peace officer, the State must prove that respondent knowingly resisted or obstructed the performance by one known to the person to be a peace officer *** of any authorized act within his or her official capacity. (720 ILCS 5/31-1(a) (West 2014); *People v. Baskerville*, 2012 IL 111056, ¶ 16. The statute does not prohibit a person from verbally resisting, using abusive language or arguing with a police officer about the validity of an arrest or other police action. *People v. McCoy*, 378 Ill. App. 3d 954, 962 (2008). Rather, 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." *Id.* The 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. *People v. Miller*, 199 Ill. App. 3d 603, 611 (1990).

¶ 12 Here, the State met its burden of establishing respondent's delinquency beyond a reasonable doubt. Officer Coughlan testified that when he placed respondent under arrest, he "pulled away, started yelling, started flailing his legs, flailing his arms, [and] stiffening." Officer Lipkin tried to assist, but it was not until Officer Coughlan used the "arm bar" control tactic that he was able to subdue respondent. This act of physical resistance by respondent clearly meets the

statutory requirements of resisting a peace officer. See *People v. Thompson*, 2012 IL App (3d) 100188, ¶ 14 (the evidence was sufficient to determine defendant resisted a peace officer when officer testimony established that the defendant resisted being handcuffed for 30 to 45 seconds by throwing his elbows toward the officer's head); *People v. Ostrowski*, 394 Ill. App. 3d 82, 98 (2009) (there was sufficient evidence to uphold defendant's conviction where defendant repeatedly pulled away from the officers and then "wrestled" with them for 10 seconds before being handcuffed). In addition, Officer Coughlan was a 20 year veteran of the CPD who dealt with similar situations throughout his career. The circuit court found him credible and we will not substitute our judgment for the trier of fact on these matters. See *People v. Baugh*, 358 Ill. App. 3d 718, 736 (2005) (it is the function of the trier of fact to determine the inferences to be drawn from the evidence, assess the credibility of the witnesses, decide the weight to be given their testimony, and resolve any evidentiary conflicts); *People v. Smith*, 185 Ill. 2d 532, 541 (1999) (the positive testimony of a single credible witness is sufficient to support a conviction).

¶ 13 Additionally, based on the record before us, we agree with the circuit court that Officer Coughlan was not impeached on the witness stand. Officer Coughlan acknowledged that he did not recall offhand all of the details contained in the police reports, which were summary in nature, but did author the arrest report stating respondent "resisted arrest." We agree with the circuit court that a police report summarizes an incident and simply because everything in Officer Coughlan's testimony was not present in the police report does not make him an incredible witness. See *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007) ("[t]he trier of fact is best equipped to judge the credibility of witnesses, and due consideration must be given to the fact that it was the trial court *** that saw and heard the witnesses"). Accordingly, based on the evidence as a whole, taken in the light most favorable to the State as we must, a reasonable

finder of fact could conclude that the evidence was sufficient to sustain respondent's adjudication.

¶ 14 Although respondent failed to address this contention below, he now contends that his right to due process was violated because his parent and custodian were not properly notified of the adjudication hearing. Specifically, respondent argues that although Lee and Williams were notified of the proceedings against respondent and the initial date of the adjudication hearing, they were not notified about the rescheduled hearing date and sentencing date. Even assuming error, respondent's contention fails. Under the plain error doctrine, a reviewing court will grant relief "in either of two circumstances: (1) if the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, or (2) if the 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." *In re M.W.*, 232 Ill. 2d 408, 431 (2009). The respondent has the burden of persuasion on both the threshold question of plain error and the question of whether he is entitled to relief as a result of the unpreserved error. *People v. McDonald*, 2016 IL 118882, ¶48.

¶ 15 As discussed above, the evidence was not closely balanced. The circuit court found Officer Coughlan's testimony credible and no contrary evidence is found in the record that weighs against the court's determination. See *People v. Jackson*, 2016 IL App (1st) 133741, ¶ 96 ("[f]irst-prong of plain error requires a showing that the evidence is so closely balanced that the alleged error alone would tip the scales of justice"). Further, we fail to see how declining to give notice of the continued hearing date and sentencing resulted in an unfair proceeding or undermined the integrity of the judicial process, when both Lee and Williams were given notice of the adjudication of wardship as well as the initial hearing date. Lee even appeared in court

alongside respondent and was well aware of the charges against him. The court inquired about whether notice was proper at each hearing and both parties agreed without objection. The record also suggests that respondent was represented by competent counsel. The court even asked respondent, who was eighteen-years-old at the time of the adjudication hearing, if he was comfortable proceeding without a parent and he agreed to do so of his own volition. Moreover, respondent fails to provide any evidence to show how the result would have been different with Lee and Williams in attendance. See e.g. *In re Marcus W.*, 389 Ill. App. 3d 1113, 1128 (2009) (the reviewing court determined that lack of notice to the minor's parent resulted in plain error when the "outcome of respondent minor's sentencing hearing may have been different if an adult had been present and indicated a willingness to take respondent minor back home with him or her to Kankakee County" because "the State argued on more than one occasion for imprisonment of the minor because respondent minor had no adult supervision in Champaign County"). Thus, respondent is not entitled to relief under the plain error doctrine. Finally, we reject the State's request and decline to impose any fees on respondent for filing this appeal. See *In re W.W.*, 97 Ill. 2d 53, 58 (1983) (where the supreme court declined to extend State's Attorney fees on appeals against minors).

¶ 16 CONCLUSION

¶ 17 Based on the foregoing, we affirm the decision of the Circuit Court.

¶ 18 Affirmed.