2017 IL App (2d) 150354-U
No. 2-15-0354
Order filed May 8, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 14-CM-4284
LEO COOPER,	)	Honorable Veronica M. O'Malley,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in refusing to modify the pattern jury instruction on resisting a peace officer so as to include the particular charged act of resistance: although the State introduced evidence of other acts of resistance, defendant read the charge to the jury and made clear that the jury had to find the charged act; in any event, any error was harmless, as the evidence that defendant committed the charged act was undisputed.

¶ 2 Following a jury trial, defendant, Leo Cooper, was convicted of resisting arrest (720 ILCS 5/31-1(a) (West 2014)), and he was sentenced to 12 months of conditional discharge. At issue in this appeal is whether defendant was denied a fair trial when the jury instruction for

resisting a peace officer was not modified to specify the particular act of resisting with which defendant was charged. We affirm.

¶ 3 Defendant was charged by information with two counts. Count I provided that defendant resisted arrest in that he "laid [*sic*] upon his hands to defeat handcuffing." Count II charged him with obstructing an investigation when he "refused verbal commands to disperse from a crime scene investigation."

¶ 4 During opening statements, defendant objected when the State mentioned that he refused to drop some keys that were in his hands after he was handcuffed. Although the court allowed the State to mention this, it advised the State to "move along." Defendant told the jury during his opening statement that "the State also must prove beyond a reasonable doubt that [defendant] knowingly resisted the officer in this arrest."

¶ 5 Evidence presented at trial revealed that, on the evening of October 9, 2014, defendant was alerted to some police activity on the streets in Zion. He approached the officers, who were monitoring a woman moving DJ equipment from a car to a van, and stood there observing what was happening. One of the officers, Matt du Chemin, repeatedly asked defendant to leave, defendant refused, defendant pulled away when the officer tried to handcuff him, and the officer eventually tackled defendant after he ran away. When defendant was asked to place his hands behind his back, he clenched his arms underneath his body. Du Chemin then tased defendant in the middle of his back, defendant put his hands behind his back, and he was handcuffed. Once defendant was handcuffed, he continued to delay complying with various orders the police gave him, such as orders to drop some keys he was holding and get into the squad car. Defendant objected to the State's presenting evidence of this other conduct, and the court overruled the objection, finding the conduct part of the encounter defendant had with the police.

¶ 6 A video of the interaction defendant had with the police was admitted at trial. The video, which does not show the entire encounter, reveals that defendant was politely asked several times to leave the scene. After he refused, du Chemin told defendant that he was under arrest, defendant pulled away from the officer, and then defendant started running away from the scene while questioning why he was under arrest. Although the video does not show defendant being tackled, du Chemin is heard on the video ordering defendant to put his hands behind his back. Defendant moved for a directed verdict, and the court granted the motion with regard to the obstructing charge.

¶ 7 At the jury instruction conference, defendant asked the court to modify Illinois Pattern Jury Instructions, Criminal, No. 22.14 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 22.14). Specifically, defendant asked that the instruction provide how defendant resisted, *i.e.*, that he lay on his hands to prevent du Chemin from handcuffing him. The court denied defendant's request.

¶ 8 During closing arguments, the State observed that defendant did not leave the scene when he was asked, and it mentioned how, after defendant was handcuffed, he continued to disobey the officers by, for example, refusing to drop the keys he had in his hands. The State concluded that defendant prevented the officers from "maintain[ing] order." When defendant gave his closing remarks, he read the information to the jury. Defendant stated that he was "charged with knowingly resisting an officer who was involved in an authorized act, which was the arrest *** of [defendant] by laying [*sic*] upon his hands in order to defeat the arrest." Defendant continued that "[t]he State must prove the elements of that, that he knowingly did that, it was an authorized act and that he knowingly laid [*sic*] upon his hands in order to defeat that purpose." Although defendant mentioned the fact that he did not drop the keys he had in his hands, he noted that

"that's not what the question before you is." Rather, "[t]he question is if [defendant] put his hands purposefully in front of him and refused to put them behind his back."

¶ 9 In instructing the jury, the court read IPI Criminal 4th No. 22.14. The court stated that, to sustain a charge of resisting, the State must prove, among other things, that "defendant knowingly resisted the performance by Officer du Chemin of an authorized act within his official capacity."

¶ 10 The jury found defendant guilty of resisting, and defendant filed a posttrial motion, arguing, among other things, that the court erred when it refused to allow him to amend the jury instruction for resisting arrest to delineate the specific way that he resisted. Defendant claimed that, in the absence of such a modification, it was quite possible that the jury convicted him of resisting arrest based on the other bad-acts evidence presented. The trial court denied the motion. In doing so, the court noted that it must give an Illinois Pattern Jury Instruction (IPI) unless it does not accurately state the law. Because IPI Criminal 4th No. 22.14 accurately stated the law, the court found that it was properly given. This timely appeal followed.

¶ 11 At issue in this appeal is whether defendant was denied a fair trial when the jury instruction for resisting a peace officer was not modified. In addressing this issue, we note that the parties do not agree on what standard of review should apply. Defendant claims that our review is *de novo*, because the issue concerns whether the jury instruction accurately conveyed the law. See *People v. Parker*, 223 Ill. 2d 494, 501 (2006). The State contends that the abuse-of-discretion standard applies, because the issue concerns the trial court's decision not to give a non-IPI instruction. See *People v. Garcia*, 165 Ill. 2d 409, 432 (1995). After reviewing the briefs and the record before us, we agree with the State. Accordingly, we consider whether the trial court abused its discretion when it declined to modify the IPI.

¶ 12 Turning to the substance of this appeal, we note that "[t]he function of jury instructions is to convey to the jurors the law that applies to the facts so they can reach a correct conclusion." *People v. Hopp*, 209 Ill. 2d 1, 8 (2004). Illinois Supreme Court Rule 451(a) (eff. April 8, 2013) provides that, whenever the IPI contains an applicable jury instruction and the court determines that the jury should be instructed on the subject, "the [IPI instruction] shall be used, unless the court determines that it does not accurately state the law." IPIs should be used because they "have been painstakingly drafted" and "[t]rial judges should not take it upon themselves to second-guess the drafting committee where the instruction in question clearly applies." (Internal quotation marks omitted.) *People v. Durr*, 215 Ill. 2d 283, 301 (2005). Thus, the trial court is "allowed to deviate from the suggested instruction and format only where necessary to conform to unusual facts or new law." (Internal quotation marks omitted.) *People v. Anderson*, 2012 IL App (1st) 103288, ¶ 40.

¶ 13 Here, we cannot conclude that the trial court abused its discretion when it denied defendant's request to modify the jury instruction to provide the specific act of resisting with which defendant was charged. The information charging defendant with resisting alleged that defendant "laid [*sic*] upon his hands to defeat handcuffing." Although this language was necessary for charging defendant with resisting a peace officer (see *People v. Hughes*, 229 Ill. App. 3d 469, 473 (1992)), it was not an essential part of the jury instruction for resisting. The only required elements of resisting a peace officer are a defendant's (1) knowledge that he (2) obstructed or resisted (3) a peace officer's authorized acts (4) that were performed within the officer's official capacity. 720 ILCS 5/31-1(a) (West 2014). Thus, the *manner* in which the defendant resisted is not an element of the offense, and such facts do not need to be included in the jury instruction. See, *e.g.*, *People v. Zernel*, 259 Ill. App. 3d 949, 956 (1994) (instruction for

aggravated criminal sexual assault did not need to provide that the defendant committed the crime by " 'display[ing] of a knife,' " because that is not an element of the offense). Because the jury instruction given here properly apprised the jury of the statutory elements of resisting, the trial court properly rejected defendant's modified IPI instruction.

¶ 14 In reaching our conclusion, we find unfounded any claim that the jury might have convicted defendant of resisting based on uncharged conduct. Although it is true that evidence of defendant's continued disobedience was presented at trial, the admission of such evidence was not improper even though those acts were not alleged in the information. See *People v. McCoy*, 378 Ill. App. 3d 954, 965 (2008) (evidence of other acts of resistance in which the defendant engaged was not improperly admitted in case where the defendant was charged with resisting a peace officer only by "pulling away during handcuffing"). Moreover, defendant made quite clear in his closing remarks that the jury was charged with assessing only whether defendant resisted du Chemin by preventing the officer from handcuffing him. Looking at the record in its entirety, we conclude that the jury was sufficiently apprised of the distinction between the charged and uncharged conduct. See *People v. Perez*, 2012 IL App (2d) 100865, ¶¶ 60-63. Accordingly, given the absence of any evidence to the contrary, we presume that the jury followed the law. See *People v. Wilmington*, 2013 IL 112938, ¶ 49.

¶ 15 Finally, even if we concluded that the trial court abused its discretion in failing to modify the IPI, we still would not, as defendant requests, reverse his conviction. It is well settled that "[a]n error in a jury instruction is harmless if it is demonstrated that the result of the trial would not have been different if the proper instruction had been given." *People v. Johnson*, 146 Ill. 2d 109, 137 (1991). Here, the uncontradicted evidence against defendant revealed that defendant lay on his hands to prevent du Chemin from handcuffing him and that he complied with the

officer's order only after he was tased. Given this evidence, we cannot conclude that defendant would have been found not guilty if the IPI had been modified.

¶ 16 The cases on which defendant relies are clearly distinguishable, as they involved jury instructions that omitted an element of the offense (*People v. Ogunsola*, 87 Ill. 2d 216, 221-22 (1981)), pertained to an offense with which the defendant was not charged (*People v. Stanko*, 402 Ill. 558, 561 (1949)), and addressed the sufficiency of the charging instrument (*Hughes*, 229 Ill. App. 3d at 473-74). Such circumstances were not presented here.

¶ 17 For these reasons, the judgment of the circuit court of Lake County is affirmed. 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, 178 (1978).

¶ 18 Affirmed.