2017 IL App (2d) 160293-U
No. 2-16-0293
Order filed October 23, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KRYSTAL R. JENKINS, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 13-CM-1397 Honorable John A. Noverini, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion by refusing to give the jury defendant's nonpattern instruction that a person may resist a warrantless entry for a purpose other than an arrest: the State's instructions, by conveying that an entry for an arrest was authorized, also conveyed that an entry for another purpose was not authorized, and defendant's proposed instruction was argumentative in that it unduly emphasized her theory of the case.

¶ 2 Following a jury trial, defendant, Krystal R. Jenkins, was convicted of two counts of resisting and obstructing a peace officer (720 ILCS 5/31-1(a) (West 2014)). She appeals, contending that the trial court erred in refusing her proposed instruction on her right to resist unauthorized police conduct. We affirm.

¶ 3 One count of the information alleged that defendant obstructed a peace officer in performing the authorized act of arresting Deandre Brooks. The second count alleged that she resisted her own arrest. Defendant does not challenge her conviction on this second count.

¶ 4 At trial, Aurora police officer Jay Ellis testified that on April 8, 2013, he was patrolling the Harbor Village apartment complex with his partner, Nathan Petschke. The complex was a high-crime area, with frequent gang and drug activity. As they entered a second-floor hallway, Ellis heard Petschke say to a person, "who are you and do you live here." Ellis then recognized the person as Brooks, whose nickname is "Chubs." Ellis saw Brooks regularly and knew that he was banned from the complex.

¶ 5 Brooks began walking away from the officers. Ellis said, "Chubs, stop," but Brooks continued walking away. Ellis chased Brooks up the stairwell to the third floor, where Brooks ran into apartment 3G. Petschke put his foot in the doorway to stop the door from closing. The officers entered the apartment and yelled for Brooks to come out. Ellis and Petschke intended to arrest him for misdemeanor trespass.

¶ 6 At that point, defendant approached the officers from inside the apartment and yelled for them to leave. Defendant, who was "very upset," told the officers that they did not have a search warrant. A second woman approached, also demanding that the officers leave.

¶ 7 Defendant called 911 to complain about the policemen being in her apartment. Ellis tried to explain that Brooks had run from them, that he was banned from the apartment complex, and that he needed to come out because he was under arrest. Ellis told defendant that, if she did not allow the officers into the apartment, she would be arrested for obstruction.

¶ 8 Ellis attempted to walk past defendant, but she blocked him with her body and pushed his shoulder. He told defendant that she was under arrest. However, he did not attempt to handcuff

her at that time, because she was so upset. Defendant retreated toward a bedroom, but Ellis grabbed her arm. She pulled free and started to enter the bedroom before the officers pulled her back and escorted her to the outside hallway. By that time, Sergeant Tom McNamara had arrived and he helped the other officers handcuff defendant. The officers did not find Brooks in the apartment. However, the windows of the two bedrooms were open.

¶ 9 On cross-examination, Ellis said that he could have called for a search warrant but did not. He said that he told defendant that he was there to arrest Brooks, but this was not included in his written report. Rather, his report stated that he told defendant that he saw Brooks enter the apartment and needed to search for him. However, defendant "ignored several orders to exit" the apartment so that they could search.

¶ 10 Petschke's testimony largely corroborated Ellis's. He knew that Brooks was banned from the complex and he intended to arrest him. He did not obtain a search warrant because he was in fresh pursuit of a fleeing suspect. After defendant was handcuffed, Petschke and Ellis searched the apartment, but Brooks was not there. Brooks was arrested later and charged with criminal trespass and obstructing.

¶ 11 McNamara testified that he went to the apartment building in response to Petschke's and Ellis's call for assistance. McNamara worked with the other officers to handcuff defendant, who was yelling, screaming, and flailing her arms. When Ellis and Petschke returned to the apartment to look for Brooks, McNamara stayed with defendant and tried to calm her down. Defendant told McNamara that she "was just trying to protect her baby daddy."

¶ 12 Defendant testified that she was home with her mother and son when she heard a police officer calling for Chubs. She told the officer to leave. She said, "you don't have a warrant and you can't be in here." Nevertheless, the officer tried to walk past her into the apartment. She

believed that the officer was "trying to look around in the house to see was [sic] anybody in there." She told the officer that Chubs was not there and that she was going to get her son from the bedroom. She did not tell McNamara that she was trying to protect her "baby daddy." She was mad because the officers were making a "big scene" with her son present. She would have allowed the officers to search her apartment if they had knocked and asked "politely," because Brooks was not there.

¶ 13 The State tendered, among others, instruction numbers 21 and 22. Proposed instruction number 21 read, "A person is not authorized to use force to resist his arrest or the arrest of another, which he knows is being made by a peace officer, even if he believes that the arrest is unlawful and the arrest in fact is unlawful." Instruction number 22 read, "It is an authorized act for a peace officer to enter a private residence for the purpose of making an arrest when the officers are in fresh pursuit of the subject of the future arrest." The court overruled defense objections to these instructions.

¶ 14 Defendant tendered her instruction number 5, reading, "Where a police officer is not trying to make an arrest, a person may use reasonable force to prevent the officer from making an unconstitutional entry into his or her apartment." The State successfully objected to this instruction. The instructions ultimately given also included the principle that, absent exigent circumstances, police may not enter a private residence to make a warrantless search or arrest; the instructions contained a list of factors to consider when assessing exigency.

¶ 15 In closing, defense counsel argued that the officers told defendant they were there to conduct a search, not an arrest. Counsel further told the jury that "a person may use reasonable force to prevent the officer from making an unconstitutional entry in his or her *** apartment."

¶ 16 The jury found defendant guilty of both counts. The court sentenced defendant to 18 months' conditional discharge. Defendant timely appeals.

¶ 17 Concerning the conviction of obstructing Brooks's arrest, defendant contends that the court erred by refusing to give her proposed instruction number 5. She argues that there was at least some evidence that she reasonably believed that the police were there to conduct a warrantless search, which she could lawfully resist, and that the instruction was necessary to convey this principle to the jury.

¶ 18 The purpose of jury instructions is to provide the jurors with the legal principles applying to the evidence so that they can reach a correct verdict. *People v. Hopp*, 209 Ill. 2d 1, 8 (2004). "Jury instructions should not be misleading or confusing." *People v. Pinkney*, 322 Ill. App. 3d 707, 717 (2000). There must be sufficient evidence to support an instruction so that the jury is not confused by issues not properly before it. *Id.*

¶ 19 On review, we decide whether the instructions, taken as a whole, fairly, fully, and comprehensively apprised the jury of the relevant legal principles. *People v. Parker*, 223 Ill. 2d 494, 501 (2006). It is enough if the instructions, considered as a whole, fully and fairly announced the law applicable to the parties' respective theories of the case. *Id.*

¶ 20 Illinois Supreme Court Rule 451(a) (eff. Apr. 8, 2013) provides that, whenever the Illinois Pattern Jury Instructions (IPI) contain an applicable instruction on a subject about which the court decides that the jury should be instructed, the court must use the IPI instruction "unless the court determines that it does not accurately state the law." Where no IPI jury instruction covers a subject, the court has the discretion to give a nonpattern instruction. *People v. Boand*, 362 Ill. App. 3d 106, 134 (2005). Whether the court has abused its discretion in giving a

particular instruction depends in part on whether it was an accurate, simple, brief, impartial, and nonargumentative statement of the applicable law. *Id.*

¶ 21 Here, the trial court was within its discretion to refuse defendant's tendered instruction. The State's instructions adequately informed the jury that one may not resist an arrest, even if unauthorized, and that it is an authorized act to enter a private residence to make an arrest when the officer is in hot pursuit of a suspect. Defendant's instruction number 5 was essentially the converse of this principle, that one may resist an entry for a purpose other than an arrest. Because the State's instructions conveyed what was authorized—an entry for an arrest—they also conveyed that an entry for any other purpose was not authorized and could be resisted.

¶ 22 Further, defendant's proposed additional instruction on this point was argumentative. An argumentative instruction is one that "singles out or unduly emphasizes a particular issue, theory, or defense." Black's Law Dictionary 107 (6th ed. 1990). Here, the proposed instruction would have unduly emphasized defendant's theory, that the entry was unconstitutional.

¶ 23 Moreover, defense counsel was allowed to argue that defendant reasonably believed that the officers were there to conduct a warrantless search and that defendant could use reasonable force to resist such a search. Thus, the instructions adequately informed the jury of the applicable law, and defense counsel had ample opportunity to argue defendant's theory to the jury.

¶ 24 The judgment of the circuit court of Kane 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 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 25 Affirmed.