2018 IL App (1st) 153642-U

No. 1-15-3642

Order filed May 17, 2018

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 MC 4001800
	)	
CHRISTINE OLESZCZAK,	)	Honorable
	)	James A. Zafiratos,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Gordon and Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for disorderly conduct is affirmed over her contention that the State failed to prove beyond a reasonable doubt that she transmitted a false report to the Berwyn police department.

¶ 2 Following a bench trial, defendant Christine Oleszczak was convicted of disorderly conduct for transmitting a false report to the Berwyn police department (720 ILCS 5/26-1(a)(5) (West 2014)) and was sentenced to six months' supervision and 35 hours of community service. Defendant appeals, arguing that the State failed to prove beyond a reasonable doubt that she

transmitted a false report to the Berwyn police department. For the reasons set forth herein, we affirm.

¶ 3 Defendant was charged by criminal complaint with one count of disorderly conduct, alleging that she "knowingly *** transmitted via 911 a false report to the Berwyn Police Department without the reasonable grounds necessary to believe that transmitting the report [was] necessary for the safety and welfare of the public." Prior to trial, the State amended the complaint to further allege that: "to wit, the defendant knowingly called 911, Berwyn Police Department, without an emergency, after previously being advised not to do so on the same day regarding a previous call to Berwyn Police Department 911. Defendant waived her right to a jury trial, and the case proceeded to a bench trial.

¶ 4 The parties stipulated to the admission of audio recordings of two 911 calls which were placed by defendant on April 7, 2015. The recordings were played in open court. During the first 911 call, defendant told the operator that "Edna and her mother" had knocked on her window, and that she had a "stalking no contact" order of protection. Defendant provided her name, but initially declined to give the operator a callback number, stating "I don't need a call back number, I just don't want to be stalked anymore." After the operator convinced defendant to give a callback number, the operator told her that officers had been dispatched to come talk to her. Defendant responded, saying "I don't need anyone to talk to me, I have this stalking no contact order." The operator told defendant that the officers needed to talk to her to see the order of protection and ascertain what had happened.

¶ 5 During the second 911 call, which was placed a short time after the first, defendant told the operator that she had spoken to the officers who had been dispatched to her apartment, but

that she did not understand what they had told her and that she was intimidated by police. The following exchange then took place:

> [Defendant]: Okay, now I've been to court, through the court system. If she contacts the Berwyn Police Department --
>
> [Operator]: Did she contact you today?
>
> [Defendant]: Yes. And if she contacted the Berwyn police department it's considered contact."

The operator then explained that calling the police department did not constitute a "contact" for the purposes of an order of protection, and informed defendant that officers were at her front door.

¶ 6 Officer Henry Feret testified that, on April 7, 2015, he received a dispatch call to go to defendant's apartment. When he arrived at the apartment, he smelled a strong odor of alcohol and observed that defendant appeared to be intoxicated. Defendant told Feret that her neighbors had knocked on her window. Feret testified that, when he asked defendant why she had called 911, she stated that she had not called the police. When Feret asked defendant where her phone was located, defendant provided her phone number but stated she could not find her phone. Based on his observations, Feret determined that no emergency existed, and told defendant not to call 911 again unless there was an emergency. He then left the apartment.

¶ 7 Approximately 10 to 15 minutes later, Feret received a dispatch call to return to defendant's apartment. Upon arriving at her apartment, Feret asked defendant why she had called 911. Defendant told Feret that she had never called 911. Feret then took defendant into custody and charged her with disorderly conduct.

¶ 8 On cross-examination, Feret acknowledged that a police report he authored stated that "[defendant] stated that she did not call the Berwyn Police for assistance." He testified that he knew that defendant and defendant's neighbor each had an order of protection against the other but that he did not interview defendant's neighbors before determining that no emergency existed. He also testified that he had the discretion "as to whether or not to arrest somebody."

¶ 9 During closing arguments, the State argued that defendant "divert[ed] attention when there [was] no issue regarding that safety and welfare of the public nor herself" by twice calling 911 and twice denying that she had called for police. It also argued that the fact that she denied calling police implied that there was no ongoing emergency and that no one had knocked on her window. Defendant argued that she did not transmit any false information during the 911 calls. She argued that there was a difference between "did not call the police" and "did not call the police for assistance," and that she did not want to interact with the police because she was afraid of them; she simply wanted to the police to enforce the order of protection. The trial court found defendant guilty, noting that:

> "[T]he defendant did make two phone calls to the Berwyn Police Department, and in such, did not cooperate when the officers arrived, and as such, the Court feels that the phone calls were false in nature since she failed to cooperate. The Court finds the officer credible and believable, and his testimony is uncontradicted."

¶ 10 Defendant filed a motion for a new trial arguing, *inter alia*, that the State was required to prove that she had made "a false report via 911," and not simply that she had called 911 "without emergency." She argued that the State failed to prove that any information that she had given during the calls was false, especially where the police did not interview the neighbor, who was

the subject of her order of protection. During the hearing on the motion, defendant argued that that criminal complaint alleged that she had called 911 without an emergency after being advised not to do so, which did not comport with the disorderly conduct statute, which required the State to prove that she had transmitted false information. The State argued that it had proven defendant's claim that her neighbor had knocked on her window to be false because "[w]hen the police came over there, she denied making the calls." The court denied the motion, noting that "there's no question that the calls to the police department were not based on facts. When the police officers arrived, she was not cooperative. She would not cooperate with them. She was asked not to call. She called again." After a sentencing hearing, the trial court sentenced defendant to six months' supervision and 35 hours of community service.

¶ 11 On appeal, defendant contends that that the State failed to prove beyond a reasonable doubt that she transmitted a false report to the Berwyn police department.

¶ 12 The due process clause of the fourteenth amendment protects defendants against conviction in state courts except upon proof beyond a reasonable doubt of every fact necessary to constitute the charged crime. *People v. Brown*, 2013 IL 114196, ¶ 48; *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979). When ruling on a challenge to the sufficiency of the evidence, a reviewing court " 'is not required to search out all possible explanations consistent with innocence or be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. On the contrary, we must ask, after considering all of the evidence in the light most favorable to the prosecution, whether the *** evidence [in the record] could reasonably support a finding of guilt beyond a reasonable doubt.' " *People v. Grant*, 2014 IL App (1st) 100174-B, ¶ 24 (quoting *People v. Wheeler*, 226 Ill. 2d 92, 117-18 (2007)). In doing so, we must

draw all reasonable inferences from the record in favor of the prosecution, and " '[w]e will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt.' " *People v. Lloyd*, 2013 IL 113510, ¶ 42 (quoting *People v. Collins*, 214 Ill. 2d 206, 217 (2005)). A conviction may be sustained on circumstantial evidence alone. *People v. Murphy*, 2017 IL App (1st) 142092, ¶ 10.

¶ 13 Defendant was charged with violating section 26-1(a)(5) of the Criminal Code of 2012 which states that a person commits the offense of disorderly conduct when she "[t]ransmits or causes to be transmitted a false report to any public safety agency without the reasonable grounds necessary to believe that transmitting the report is necessary for the safety and welfare of the public." 720 ILCS 5/26-1(a)(5) (West 2014). The instant complaint specifically alleged that "to wit, the defendant knowingly called 911, Berwyn Police Department, without an emergency, after previously being advised not to do so on the same day regarding a previous call to Berwyn Police Department 911."

¶ 14 Here, we find that the evidence presented at trial, when viewed in the light most favorable to the State, was sufficient for any rational trier of fact to conclude that defendant had transmitted a false report to the Berwyn police department in both of her calls to 911. Defendant stipulated to the introduction of recordings of both calls. During the first call, defendant told the 911 operator that her neighbor had violated an order of protection by knocking on her window. When Officer Feret arrived at her apartment, he observed that defendant was intoxicated and asked her why she had called 911. Defendant stated that her neighbor had knocked on her window, but insisted that she had not called Berwyn police. Based on his observations, Feret determined that no emergency related to defendant's order of protection existed. He then told her

not to call 911 again unless she had an emergency. During her second call to 911, defendant told the operator that her neighbor had contacted her, and she expressed her belief that calling the police was considered "contact" for the purposes of her order of protection. The operator directed Feret to return to the apartment. There, Feret again asked defendant why she had called 911, and defendant again stated that she never placed a call to 911. In finding defendant guilty of disorderly conduct, the trial court specifically noted defendant's level of intoxication, and stated that it believed "that the phone calls were false in nature since she failed to cooperate." We find that the evidence of defendant's intoxication, her vacillating reports about the nature of the contact she had received from her neighbor, and her denial that she ever contacted 911 was sufficient for any rational trier of fact to conclude that defendant's reports that her neighbor had contacted her were false, and that defendant did not have the "reasonable grounds necessary to believe that transmitting the report was necessary for the safety and welfare of the public." See 720 ILCS 5/26-1(a)(5) (West 2014).

¶ 15 On appeal, defendant does not challenge the sufficiency of the charging instrument. Rather, she argues that the language of the charging instrument suggests that she was only charged with making a false report to 911 during her second call. Further, she argues that the State failed to prove beyond a reasonable doubt that she made a false report in her second call because the second call "did not even report that anything had happened," and was simply a request for clarification as to what the responding officers had told her regarding the order of protection.

¶ 16 However, even if we were to limit our consideration to the second 911 call as defendant requests, we would still find sufficient evidence to support the trial court's guilty finding. During

the second call, the operator asked defendant if her neighbor had contacted her that day and she answered in the affirmative. Defendant's answer to this question was a report to the Berwyn police department that she had been contacted by her neighbor. Even if this report was based on defendant's mistaken belief that calling the police was considered a "contact" for the purposes of the order of protection, the fact that she reported different types of contact by her neighbor in each call (knocking on a window in the first call and calling the police in the second call) supports the conclusion that this report that her neighbor contacted her was false.

¶ 17 Defendant further contends that the court's ruling "faulted [her] for not cooperating [with police]—but not for making false statements." She argues that the disorderly conduct statute does not make it an offense to call 911 without an emergency or to fail to cooperate with police officers. See *People v. Kolton*, 219 Ill. 2d 353, 359 (2006) ("a defendant may not be convicted of an offense he has not been charged with committing"). However, the court's findings make clear that it did not find her guilty of disorderly conduct for not cooperating with police. Rather, the trial court determined that the fact that defendant denied that she ever called the police department made it likely that the reports of contact by the neighbor were false.

¶ 18 Finally, defendant argues that Officer Feret's testimony that defendant stated that she never called 911 was impeached by his police report, which stated that defendant "did not call the police for assistance." She contends, as she did in her motion for a new trial, that there is difference between "did not call for assistance" and "did not call at all," which is evinced by her stated fear of police and her declaration that she did not want to speak to anyone. However, on direct examination, Feret testified that defendant "stated she did not call the Berwyn Police Department at all." The court stated that it found that Feret was "credible and believable, and his

testimony [was] uncontradicted." It was the trial court's prerogative, as the trier of fact, to make credibility determinations and resolve any alleged inconsistencies in the evidence. See *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24 ("As the trier of fact, the trial court is in the superior position to assess the credibility of witnesses, resolve inconsistencies, determine the weight to assign the testimony, and draw reasonable inferences therefrom"). We will not substitute our judgment for that of the trier of fact on these matters. *People v. Branch*, 2018 IL App (1st) 150026, ¶ 29. Rather, this court views the evidence presented at trial in the light most favorable to the State, and will reverse a defendant's conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt (*Lloyd*, 2013 IL 113510, ¶ 42); this is not one of those cases.

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed.