2019 IL App (1st) 153493-U

No. 1-15-3493

Order filed February 13, 2019

Third 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 MC2 002011
	)	
ANGEL PEREZ,	)	Honorable
	)	Paul S. Pavlus,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: We reverse defendant's conviction where the complaint charging obstructing a peace officer, challenged prior to trial, failed to specify an authorized act undertaken by the police officers during a warrantless entry into a residence.

¶ 2 Following a bench trial, defendant Angel Perez was found guilty of obstructing a peace officer (720 ILCS 5/31-1(a) (West 2014)) and sentenced to 18 months' conditional discharge. On appeal, he argues the complaint charging him with obstructing a peace officer was factually

insufficient as it failed to specify an authorized act undertaken by the police officer and the evidence was insufficient to prove him guilty beyond a reasonable doubt. We reverse.

¶ 3 Defendant was charged by complaint with one count of obstructing a peace officer stemming from acts occurring on July 3, 2015, in Des Plaines, Illinois.[1] The complaint stated defendant,

> "knowingly obstructed the performance and investigation of Police Officer R. Smith #675 of an authorized act within her official capacity, knowing P.O. R. Smith to be a peace officer engaged in the execution of her official duties. While investigating a domestic trouble call at [an apartment], with a history of domestic battery, the defendant became verbally loud and used explicit profanity and refused to open the door for P.O. Smith. Upon entry to the apartment, the defendant clenched his fist, refused to put the pit dog away and became aggressive and refused to obey verbal commands to stop his action to allow P.O. Smith to walk inside the apartment and investigate a call of domestic trouble in violation of 720 Illinois Compiled Statutes 5/31-1."

¶ 4 Subsequently, the State sought and was granted leave to amend the complaint. The amended complaint stated defendant,

> "knowingly obstructed the performance and investigation of Police Officer R. Smith #675 of an authorized act within her official capacity, knowing P.O. R. Smith to be a peace officer engaged in the execution of her official duties. [T]he defendant refused to open the door for P.O. Smith. Upon entry to the apartment the defendant refused to obey

[1] Defendant was charged and tried along with his wife, Raquel Perez. She is not a party to this appeal.

verbal commands to stop his action in violation of 720 Illinois Compiled Statutes 5/31-1."

¶ 5 Prior to trial, defense counsel made an oral motion to dismiss the complaint, arguing that the charge did not constitute an offense in that the complaint did not specifically state "the authorized action that the police were conducting [in] order to constitute an obstruction." Specifically, defense counsel asserted, "[o]nce the State has amended [the complaint], all they have amended [the complaint] to do is say that the police officers were making an investigation and that the parties refused to open the door. Refusing to open the door of their own home is not an obstruction of any act." Counsel asserted that the State had to allege in the complaint that the authorized act was a warrantless entry into a protected home, and neither probable cause nor exigent circumstances were alleged in the complaint.

¶ 6 The State responded, arguing that the officer's "authorization to be in the apartment is a factual determination to be made by the court once those facts are elicited." It further contended the complaint alleged additional facts, including that defendant refused to open the door, to obey verbal commands, and to stop his actions. The State argued it did not have to "allege exigent circumstances in these complaints to survive a motion to dismiss. Regardless, the officers' authorization to be in the apartment would be a question of a motion to quash or a trial issue, it would not be a motion to dismiss issue." The trial court denied the oral motion to dismiss, reasoning that "the facts will bear out whether or not there w[ere] exigent circumstances and whether or not there was a reason why the police needed to enter, and they did not allow him to enter." The court found there were sufficient facts in the complaint to proceed to trial.

¶ 7 At trial, Cook County sheriff police officer Renee Smith testified that, on July 3, 2015, she responded with two officers to a call of "domestic trouble" at a second-floor apartment in Des Plaines. Smith learned from a dispatcher that police officers in the third watch and first watch had been to the same apartment the night before regarding domestic trouble. Smith recognized the address of the apartment because she had been there previously regarding "a domestic call, a suicide call."

¶ 8 When Smith arrived on the scene, she went to the front of the apartment complex but was unable to get inside. She then went around to the back where she opened the back door of the apartment complex and heard "screaming and hollering" from the second floor. As Smith approached the apartment, she heard "a male and a female voice screaming and hollering." Smith and the two officers knocked on the apartment door and identified themselves as Cook County sheriff police officers. Smith heard a male voice respond " 'F*** the police. We ain't [*sic*] call you,' " along with other profanities. Smith and the officers again identified themselves as police officers, and Smith stated they were there for a call of domestic trouble. The male voice stated that he did not call the police and mentioned the neighbors. Smith asked the man to open the door to talk and for the officers to check his well being.

¶ 9 Smith heard "screaming and hollering" from a female voice who said, " 'Get the f*** out of here. We don't want you. Nobody called you. Ya'll keep f*** calling us. Why don't you go down and arrest the neighbors. And you was here yesterday two, three times.' " The occupants refused to open the door.

¶ 10 Aside from the male and female voices, Smith heard the voices of children. The woman was "cursing" and told a child, " 'Junior, get back in the room.' " Sergeant Trinidad then arrived

on scene and stated on the police radio that he was at the front of the apartment complex and was coming around to the back. Smith and the other officers made entry into the apartment. Inside, the man, whom Smith identified in court as defendant, was holding a camera phone, stating " 'You can't come here. You need a warrant. Get the f*** out of here.' " A pitbull was standing behind him. Smith observed a teenage child and a toddler child in a hallway inside the apartment.

¶ 11 Defendant was pacing back and forth with the camera phone, and Smith asked him to "put the dog up," so they could talk. Defendant refused and continued to pace in the apartment and tell officers to "get the f*** out." Smith heard another officer ask defendant to put the pitbull away and heard Sergeant Trinidad telling defendant to put the phone down and to "come towards us and let's talk." Sergeant Trinidad and the officer attempted to place defendant under arrest but defendant "was backing up away from them" towards the kitchen. Eventually, defendant was placed under arrest. Smith admitted on cross-examination that the officers did not have a search warrant for the apartment or an arrest warrant for defendant.

¶ 12 Sergeant Trinidad testified that he arrived at the apartment in response to a domestic disturbance. Based on information he received from the officers already on scene, Trinidad determined a "well-being" check of the physical safety of the occupants of the apartment was warranted. Trinidad explained a well-being check at the apartment was necessary because there was a "domestic in progress," children inside the apartment, and defendant refused to let officers inside to check everyone's physical safety. Trinidad advised the officers "to make several more commands to open the door or we will be making entry."

¶ 13 As Trinidad entered the apartment, he observed defendant standing five or six feet from the door. Defendant was screaming profanities and held a cell phone as if he was recording the

incident. Trinidad asked defendant to put the phone down but defendant assumed an "aggressive" or "fighting stance" with a clenched fist. Trinidad ordered defendant to put the phone down and put his hands behind his back but defendant refused. On cross-examination, Trinidad clarified he told defendant to put the phone down and that defendant was under arrest.

¶ 14 The court found defendant guilty of obstructing a peace officer. The court further found that the officers acted reasonably and prudently, and that exigent circumstances existed to enter the apartment. The court reasoned:

> "They would be derelict in their duties not to respond, to walk away from the domestic, to go and try to secure a warrant to get into that apartment. And God forbid someone would cause someone else in that apartment any harm. They did exactly what we ask them to do as a society. They acted prudently, they acted reasonably, and there were exigent circumstances to enter that apartment. They didn't do anything wrong on that given day.
>
> Now, let's look at the charges. Obstructing a peace officer. Everything they did obstructed this investigation. Everything they did. From not opening the door to not putting that dog away, to not answering their questions. Everything they did obstructed the investigation of those police officers on those nights."

¶ 15 The court sentenced defendant to 18 months' conditional discharge. Defendant filed a timely notice of appeal.

¶ 16 On appeal, defendant argues the complaint charging him with obstructing a peace officer was factually insufficient in that it failed to specify an authorized act undertaken by the police officers. Because of this, he asserts we must reverse his conviction. The State contends the

complaint was sufficient where it alleged that defendant obstructed Officer Smith's "police investigation" by failing to open the door to the apartment and failing to obey verbal commands once the police were inside the apartment.

¶ 17 "A criminal defendant has a fundamental right to be informed of the nature and cause of criminal accusations made against him." *People v. Carey*, 2018 IL 121371, ¶ 20. Because failure to charge an offense implicates due process concerns, such a defect may be attacked at any time. *People v. DiLorenzo*, 169 Ill. 2d 318, 321 (1996). Where "an indictment or information is challenged before trial in a pretrial motion, the charging instrument must strictly comply with the requirements in section 111-3(a) [of the Code of Criminal Procedure of 1963]." *Id.* ¶ 21; accord *People v. Rowell*, 229 Ill. 2d 82, 93 (2008). The parties agree defendant challenged the sufficiency of the complaint before trial.

¶ 18 Section 111-3(a) of the Code of Criminal Procedure of 1963 (Code) provides that a criminal charge shall be in writing and allege the commission of an offense by: (1) stating the name of the offense, (2) citing the statutory provision alleged to have been violated, (3) setting forth the nature and elements of the offense charged, (4) stating the date and county of the offense as definitively as can be done, and (5) stating the name of the accused, if known. 725 ILCS 5/111-3(a) (West 2014).

¶ 19 Section 5/31-1(a) of the Criminal Code of 2012 sets forth the offense of obstructing a peace officer as follows: "A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer, firefighter, or correctional institution employee of any authorized act within his or her official capacity commits a Class A misdemeanor." 720 ILCS 5/31-1(a) (West 2014). When, as here, a criminal statute "does not define or describe the act or

acts constituting the offense, a charge couched in the language of the statute is insufficient. The facts which constitute the crime must be specifically set forth." *People v. Nash*, 173 Ill. 2d 423, 429 (1996).

¶ 20 If the charging document does not strictly comply with the pleading requirements of section 111-3, the proper remedy is "a dismissal of the charging instrument or, if a trial has wrongly proceeded, a reversal of the defendant's conviction." *People v. Benitez*, 169 Ill. 2d 245, 258-59 (1996). We review *de novo* the sufficiency of the charging instrument. *People v. Espinoza*, 2015 IL 118218, ¶ 15.

¶ 21 In addressing defendant's argument, we find several cases helpful to our determination of the issue. In *People v. Hilgenberg*, 223 Ill. App. 3d 286 (1991), the defendants were charged with obstructing a peace officer where they refused to open the door of a private residence to an officer investigating a report of underage drinking. *Hilgenberg*, 223 Ill. App. 3d at 287. The complaints alleged, *inter alia*, that the defendants "knowingly obstructed the performance of Sheriff Duane Wirth of an authorized act within his official capacity, being the investigation of a reported complaint of Unlawful consumption of alcoholic beverage and Disorderly conduct, knowing Duane Wirth to be a peace officer engaged in the execution of his official duties *** refused to open the door or permit the entry of *** Wirth at [the residence] ***." *Id.* The defendants filed pretrial motions to dismiss, arguing that refusing to open a door was not a physical act of obstructing and that the officer was not engaged in an authorized act. *Id.* The defendants further argued, "in the absence of a warrant, exigent circumstances or consent, entry into the home was not an authorized act." *Id.* The court granted the motions to dismiss, and the State appealed. *Id.* at 288.

¶ 22 On appeal, the appellate court first noted, citing *People v. Stoudt*, 198 Ill. App. 3d 124, 125 (1990), that a complaint charging resisting or obstructing a peace officer "must set forth sufficient allegations regarding the 'authorized' act the officer was performing." *Id.* at 289. The court pointed out that the complaint's allegations directly implicated the fourth amendment, but it did not contain any allegations that the officer possessed a warrant or any kind of probable cause coupled with exigent circumstances.[2] *Id.* at 290. Given that warrantless entries into private homes are *per se* unreasonable under the fourth amendment, officers can only act pursuant to an exception to the warrant requirement. *Id.* at 291. The *Hilgenberg* court framed the issue as follows: "we are being asked to sanction, on the basis of a conclusory complaint, the prosecution of persons who presumptively have the right to refuse to open the door or to refuse entry upon the premises. This we decline to do." *Id.* at 292.

¶ 23 The court concluded that,

> "[a]lleging 'an official police investigation' does not constitute an 'authorized' act requiring defendants to open the door or permit the entry of the officer onto the premises. Absent specific factual allegations that the officer was acting on the basis of a warrant, consent, or probable cause to arrest coupled with exigent circumstances, the complaint does not state an offense. Accordingly, we conclude the complaint was insufficient as a matter of law, because there were inadequate factual allegations regarding the performance of authorized acts by the police ***." *Id.* at 294.

The court therefore affirmed the judgment of the circuit court dismissing the complaints. *Id.*

[2] The court in *Hilgenberg* refers to one "complaint" although multiple complaints, all with the same wording, were at issue.

¶ 24 In *Stoudt*, the defendants were charged with, *inter alia*, resisting a peace officer in that they " 'knowingly refused *** to remove [themselves] from the 400 block of Lincoln Highway, De Kalb, De Kalb County, Illinois, after being instructed to do so by [a De Kalb police officer] knowing [the officer] to be a peace officer engaged in the execution of his official duties.' " *Stoudt*, 198 Ill. App. 3d at 125-27. The circuit court granted the defendants pretrial motion to dismiss, and the State appealed. *Id.* at 125-26.

¶ 25 On appeal, the appellate court noted the inquiry was "whether the charging instrument complied with the requisites of section 111-3 of the Code [of Criminal Procedure]." *Id.* at 126. The court held that the complaints were deficient because, in relevant part, they did not properly allege that the officer was engaged in an authorized act. *Id.* at 128. Specifically, the court reasoned that because the resisting or obstructing a peace officer statute is written in general terms, a charging instrument must "contain sufficient allegations of the authorized act the officer was performing" in order to comply with section 111-3. *Id.* at 128. The court found the bald allegation that the officer was "engaged in the execution of his official duties" was insufficient to allege the authorized act the officer was performing. *Id.*

¶ 26 Similarly, *People v. Leach*, 3 Ill. App. 3d 389, 395 (1972), held that, because the resisting or obstructing a peace officer statute "does not particularize the offense nor does it describe the acts which constitute the crime," a complaint "charge[d] solely in the language of the statute is not sufficient." *Leach*, 3 Ill. App. 3d at 395. As the complaint purporting to charge the defendant with resisting or obstructing a peace officer merely stated the officer was acting within his official capacity, the court reversed the defendant's conviction. *Id.* at 394-95.

¶ 27 As in *Hilgenberg*, defendant here challenged the complaint in a motion to dismiss before trial, thus requiring the complaint to strictly comply with section 111-3 of the Code. Also, as in *Hilgenberg*, defendant asserted the complaint failed to set out an "authorized act" the police officer was performing. We agree with defendant that the allegations in the complaint that the officer was acting pursuant to a police "investigation" is insufficient to constitute an authorized act to allow entry into the apartment and strictly comply with section 111-3 of the Code. See *Hilgenberg*, 223 Ill. App. 3d at 294; *Stoudt*, 198 Ill. App. 3d at 128. Defendant was charged with refusing to open the door for the police officer, but unless there are "facts alleged to support the lawfulness of the officer's demand that the door to the premises be opened or that he be permitted to enter," defendant had the right to refuse to open the door. *Hilgenberg*, 223 Ill. App. 3d at 292. Indeed, there exists a presumption that the officer has no right to enter, and an occupant can therefore refuse admission. *Id.* We find the complaint here lacks "specific factual allegations that the officer was acting on the basis of a warrant, consent, or probable cause coupled with exigent circumstances [*i.e.*, the lawfulness of the officer's demand that the door *** be opened"], the complaint does not state an offense." *Id.* at 292, 294. The charge that defendant refused to obey verbal commands once the police entered is similarly deficient as it lacks any specificity what authorized act he was obstructing by doing so.

¶ 28 The State asserts that *Hilgenberg* was wrongly decided because it "erroneously conflated the question of whether the complaint was legally sufficient pursuant to 725 ILCS 5/111-3(a) with the factual determination of whether the evidence proved beyond a reasonable doubt that the alleged authorized act was, in fact, authorized." The State's argument is not well taken. As discussed, the complaints in *Hilgenberg* were dismissed before trial, pursuant to pretrial motions

filed by the defendants. See *Hilgenberg*, 223 Ill. App. 3d at 287. Therefore, there was no evidence presented which the court could have considered to have proven "beyond a reasonable doubt" the authorized act. Further, although the State in *Hilgenberg* presented some facts at the hearing on the motion to dismiss, *Hilgenberg* specifically held, "even if a trial court improperly considers evidentiary facts in weighing a defendant's motion to dismiss his complaint, the consideration of those facts does not validate a complaint that fails to charge an offense." *Id.* at 288-89.

¶ 29 The State contends *Stoudt* and *Leach* are distinguishable because, unlike in those cases, the complaint here did not charge solely in the language of the statute. It points to the language in the complaint that defendant obstructed Smith's "performance and investigation," knowing Smith "to be an officer engaged in the execution of her official duties" and "refused to open the door" and "refused to obey verbal commands."

¶ 30 The allegation that defendant refused to open the door and refused to obey verbal commands does adequately describe acts constituting the obstruction element of the offense. However, the allegation that Smith was engaged in the "performance and investigation" "of an authorized act within her official capacity" and "engaged in the execution of her official duties" essentially tracks the language of the offense and does not suffice to describe the "authorized act" undertaken by Smith requiring defendant to open the door to her or permit entry or obey commands. See *Hilgenberg*, 223 Ill. App. 3d at 294; *Stoudt*, 198 Ill. App. 3d at 128. Accordingly, we reject the State's assertion that the complaint was not charged in the language of the statute and that *Stoudt* and *Leach* are distinguishable.

¶ 31 The State argues that exigent circumstances existed for the officers to make a warrantless entry into the apartment, thereby supporting the authorized act alleged in the complaint. But in doing so, the State relies on the evidence adduced at trial, not the language of the complaint. Our supreme court has noted, "[t]he purpose of a motion to dismiss for failure to state an offense is to challenge the sufficiency of the allegations in the complaint, not the sufficiency of the evidence." *People v. Sheehan*, 168 Ill. 2d 298, 303 (1995).

¶ 32 In sum, the complaint failed to sufficiently allege the authorized act in which the officer was engaged when defendant allegedly obstructed her by refusing to open the door and obey commands. It therefore does not strictly comply with section 111-3 of the Code, as required on the pretrial motion to dismiss, and defendant's conviction must be reversed. *Benitez*, 169 Ill. 2d at 258-59. Having determined the complaint was insufficient, we need not address defendant's alternate argument that the evidence was insufficient to prove him guilty beyond a reasonable doubt.

¶ 33 For the reasons set forth above, we reverse defendant's conviction and dismiss the complaint charging obstructing a peace officer.

¶ 34 Reversed.