

2019 IL App (2d) 180936-U
No. 2-18-0936
Order filed August 20, 2019

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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,)	
)	No. 17-CM-3066
v.)	
)	
RICHARD URSIN,)	Honorable
)	James K. Simonian,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE Burke delivered the judgment of the court.
Justice McLaren and Justice Jorgensen concurred in the judgment.

ORDER

- ¶ 1 *Held:* The State proved beyond a reasonable doubt that defendant resisted or obstructed a peace officer in violation of section 31-1(a) of the Criminal Code of 2012 (720 ILCS 5/31-1(a) (West 2016)); at the time of the arrest, the facts known to the arresting officer gave rise to probable cause to support the arrest; it was not error to admit defendant's bond order at trial and therefore, there could be no plain error; and defendant's constitutional arguments lack merit. Affirmed.
- ¶ 2 Defendant, Richard Ursin, attempted to enter the Lake County Courthouse with an audio recorder at the security checkpoint. He was told that the device was not allowed in the building and that he should return the device to his car. After refusing to comply, he was arrested and charged with resisting or obstructing the performance of a peace officer in violation of section

31-1(a) of the Criminal Code of 2012 (Code) (720 ILCS 5/31-1(a) (West 2016)). Prior to and throughout the jury trial, defendant, who represented himself at trial, argued that audio recorders are not items prohibited from the courthouse and that there are no local court rules or posted notices at the courthouse explicitly banning audio recorders. The jury found defendant guilty, and the trial court sentenced defendant to a 12-month term of conditional discharge, a 10-day term in jail, and ordered him to perform 50 hours of public service work, plus fines and costs.

¶ 3 Defendant appeals *pro se*, contending that (1) the State failed to prove he was guilty beyond a reasonable doubt of resisting or obstructing a peace officer; (2) the arresting peace officer lacked probable cause to arrest him; (3) it was plain error to admit defendant's bail bond order at trial; (4) the bond order was unconstitutional; and (5) defendant's right to free speech was abridged by recording the sheriff's deputies and U.S. Securities screeners. We affirm.

¶ 4

I. FACTS

¶ 5 At trial, Deputy Mark R. Heiny testified that on October 9, 2017, he was in charge of the Lake County Courthouse security and training. He was dressed in his full uniform and was wearing a "Sheriff" patch when he was called to the magnetometer located at the north entrance of the building by U.S. Securities that they had a disruptive subject who was not complying with the rules. U.S. Securities is a private security firm that screens people entering the courthouse. Heiny notified Sergeant Karen Serzynski that he was responding to an incident at the north magnetometer. At that entrance, a notice posted by the chief judge of the circuit court listed items that were prohibited from the courthouse. Heiny stated that the list of prohibited items was not an in-depth list and he explained that a security screener had the discretion to determine whether an item that was not listed was prohibited.

¶ 6 Defendant attempted to enter the building with a digital recording device. Heiny explained to defendant, telling him more than 10 times, that the digital recording device in his possession was prohibited from the building. He directed defendant to return the item to his car. Heiny saw defendant walk outside the building onto the ramp area and return a few moments later with the device. Heiny repeated to defendant that the recording device was not allowed inside the building and once again directed defendant to remove the device to his car.

¶ 7 The U.S. Securities officer, Miss Walls, explained to Heiny that defendant had entered the building, placed the digital device on the bin to be scanned, and she advised him that it was not allowed in the building. Defendant argued with her about it, stating that there was case law that he could bring it in the courthouse.

¶ 8 Heiny explained to defendant that U.S. Securities deemed it was not allowed in the building. He told defendant that although the recording device was not allowed in the building, he was free to come into the building and use the law library or any other part of the courthouse that was open that day.

¶ 9 When defendant still failed to comply, Heiny and Sergeant Serzynski advised defendant that if he did not comply, he would be arrested for violating a condition of his bail bond order. Heiny stated that before he placed handcuffs on defendant, he did ask him if he remembered that he was under court order at the time that he was to comply with orders and requests given by U.S. Securities personnel, courthouse officers, and deputies, and that he was not to have any disturbances around the magnetometers or the courthouse. A copy of the bond order was introduced as evidence at trial. Defendant did not object to the admission of the exhibit.

¶ 10 After Heiny explained the content of the bond order to defendant to attempt to get him to comply, defendant went outside again, but he reentered shortly after with the audio device. After

entering the building a third time, defendant was placed under arrest for violating the bail bond order.¹ Heiny recorded the entire incident from his body camera and the recording was played for the jury without objection.

¶ 11 During defendant's cross-examination, he questioned Heiny about the bail bond order. Defendant asked where it was written that audio recorders are not allowed in the courthouse. Defendant introduced a picture of a sign located at the north entrance to the courthouse. Heiny acknowledged that it was not explicitly written on the sign that audio recorders are not allowed in the courthouse. During re-direct, Heiny stated that it is just a basic general sign and if it were an all inclusive list, it would cover "all of the windows."

¶ 12 Defendant produced evidence from the 19th Circuit Court's website regarding safety protocol, known as the "Courthouse Security Brief," which listed prohibited items. Heiny noted that the list was not all inclusive and was updated as necessary. Heiny read the "electronics category" which states: "cameras, videotape recorders, and cellphones are prohibited from use in the courtrooms unless expressly waived by the trial court." Heiny read further:

"The prohibited items listed are not intended to be all inclusive and is updated as necessary. To ensure everyone's security, the screener may determine that an item not on the prohibited items list is prohibited. In addition, the screener may also determine that an item is dangerous and, therefore, may not be brought through the security checkpoint."

¹ Defendant was initially charged by complaint in this case with intentionally violating his bail bond in case No. 17-CM-2634. Subsequently, an information charging defendant with resisting or obstructing a peace officer in violation of section 31-1(a) of the Code based upon the same conduct alleged in the initial complaint was filed and superseded the complaint.

¶ 13 Heiny stated that any electronic device could be a danger because the batteries in it could be wired to do something different. Heiny reiterated that the screener may determine an item not on the prohibited item list is prohibited and that is what happened in this case; the security officers deemed that the audio recorder was prohibited and Heiny agreed with that, so did the sergeant, and that is why they had asked defendant to bring it to his car.

¶ 14 Sergeant Karen Serzynski testified that defendant was not compliant with what she was asking him to do. During cross-examination, defendant asked if during the encounter it was simply argumentative. Serzynski responded that “some of your language was hostile” and “pretty abrasive.”

¶ 15 Defendant raised several motions during and after trial, including a motion to dismiss or alternatively to quash his arrest and to require the State to demonstrate probable cause, which were denied. Defendant orally argued for a directed verdict on the grounds that the State failed to prove the essential element of the authorized act. The motion was denied. Defendant filed a motion for a judgment notwithstanding the verdict (J.N.O.V.), or for a new trial, and later filed an amended J.N.O.V. motion, and this also was denied.

¶ 16 Following sentencing, defendant timely appeals *pro se*.

¶ 17 **II. ANALYSIS**

¶ 18 **A. Sufficiency of the Evidence**

¶ 19 Defendant raises several arguments in support of his contention that he was not proved guilty of the offense of obstructing a peace officer beyond a reasonable doubt. The State correctly notes that many of defendant’s points in support of his argument that he was not proved guilty are based on incorrect conclusions, such as his belief that the audio recorder was not a prohibited item and that the security officers and deputy sheriffs who staffed the security

checkpoint lacked the authority to prevent him from entering the courthouse with the audio recorder.

¶ 20 In reviewing a challenge to the sufficiency of the evidence at trial, we must consider “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 beyond a reasonable doubt.” (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant’s guilt. *Collins*, 106 Ill. 2d at 261. The critical inquiry in reviewing the sufficiency of the evidence is whether the evidence reasonably supports a guilty finding regardless of whether the evidence is direct or circumstantial, or whether the trial was by bench or jury. *People v. Lissade*, 403 Ill. App. 3d 609, 612 (2010). If the court determines that the evidence is insufficient to establish the defendant’s guilt beyond a reasonable doubt, the defendant’s conviction must be reversed. *People v. Clinton*, 397 Ill. App. 3d 215, 220 (2009).

¶ 21 Defendant was charged with and convicted of obstructing a peace officer under section 31-1(a) of the Code. Section 31-1(a) provides that a person who knowingly resists or obstructs the performance by one known to the person to be a peace officer of any authorized act within his official capacity commits a Class A misdemeanor. 720 ILCS 5/31-1(a) (West 2016). To sustain a conviction for obstructing a peace officer, the State had to prove: (1) defendant knowingly obstructed Heiny, (2) Heiny was performing an authorized act within his official capacity, and (3) defendant knew that Heiny was a peace officer. 720 ILCS 5/31-1(a); *People v. Baskerville*, 2012 IL 111056, ¶ 32.

¶ 22 Defendant argues that Heiny and the security staff at the magnetometer did not have the authority to stop him from entering the courthouse based on defendant's assertion that audio recorders are not explicitly prohibited by the written notices posted by the magnetometer and local rules. Defendant asserts that he "could not have acted with knowing practical certainty where no sign, notice, publication or policy prohibiting audio recorders exists."

¶ 23 The offense of obstructing a peace officer requires the mental state of knowledge. *People v. Kotlinski*, 2011 IL App (2d) 101251, ¶ 53. For a defendant to be found guilty of obstructing a peace officer, the State is not required to prove that the defendant acted "knowingly" as to each element of the offense. The obstruction statute defines the offense in terms of a particular result. And, as *Kotlinski* teaches, a person acts knowingly when he or she is consciously aware such result is practically certain to be caused by his or her conduct. *Kotlinski*, 2011 IL App (2d) 101251, ¶ 54. Therefore, the knowledge requirement in the statute concerns only defendant's act that he knowingly obstructs a known peace officer.

¶ 24 It is well-established that the sheriff possesses the authority to regulate entry into the courthouse, which is a secured public building. The sheriff has the "custody and care of the courthouse," and has the authority to issue reasonable rules for maintaining the safety and decorum of the building. 55 ILCS 5/3-6017; see also *Ryan v. County of Du Page*, 45 F.3d 1090, 1092 (7th Cir. 1995). Defendant concedes that the responsibilities of the court security officers assigned to the Court Security Unit at the Lake County Courthouse are described on the Lake County, Illinois, government website, which includes "protecting judges, safe-guarding juries, maintaining decorum in the courtrooms and executing all lawful orders and instructions of the court. In conjunction with Court Security, U.S. Securities, a private security firm, provides entrance security screening." Lakecountyil.gov.

¶ 25 Here, the evidence admitted at trial shows that Heiny was in charge of courthouse security. Defendant does not contest that Heiny was a peace officer. While the list of prohibited items posted at the north entrance was not an exhaustive list, Heiny explained a security screener has the discretion to determine that an item not on the prohibited list was in fact prohibited. Heiny told defendant more than 10 times that the digital recording device in defendant's possession was a prohibited item and he directed defendant to return the item to his car. When defendant did not comply, Heiny advised defendant that he would be arrested for violating his bail bond order. Defendant left the entrance but reentered a third time with the audio device after he was warned and he was then placed under arrest.

¶ 26 Although there was a posted notice of prohibited items posted at the north entrance that did not explicitly include audio recorders, the evidence presented showed that Heiny possessed the authority to guard the courthouse from the intrusion of items deemed prohibited, that he provided verbal notice to defendant that the audio recorder in defendant's possession was prohibited, and that defendant would be arrested if he reentered the courthouse with the device. Defendant's actions of reentering the building with his device showed that he was consciously aware that his arrest was practically certain to be caused by disobeying the deputy's lawful order.

¶ 27 A defendant obstructs a peace officer when he or she commits an 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." *People v. Haynes*, 408 Ill. App. 3d 684, 689-90 (2011). Whether conduct constitutes an obstruction is an inquiry for the fact-finder, based on the circumstances of each case. *Baskerville*, 2012 IL 111056, ¶ 23. Verbal resistance or argument alone is not obstruction. *People v. Berardi* 407 Ill. App. 3d 575, 582 (2011). However, a defendant's conduct need not be physical to constitute obstructing or

resisting an officer within the meaning of section 31-1(a) of the Code. *Baskerville*, 2012 IL 111056, ¶ 23. The refusal to disperse once ordered to do so may constitute an act of obstruction. See *People v. Gordon*, 408 Ill. App. 3d 1009, 1017 (2011) (finding defendant's yelling of profanities and refusal to leave after 5 to 15 police orders directing him to do so supported obstruction of a peace officer conviction); see also *People v. Synnott*, 349 Ill. App. 3d 223, 227 (2004) (“[M]erely refusing a police officer’s lawful order to move can constitute interference with the officer in the discharge of his or her duty”).

¶ 28 We find the evidence presented by the State was sufficient to prove defendant guilty of the offense of obstructing a peace officer beyond a reasonable doubt. Defendant knowingly impeded Heiny’s discharge of his duty to guard the courthouse from prohibited and dangerous items when he reentered the building a third time in possession of the audio recorder, after being directed by Heiny to remove the audio recorder from the building more than 10 times. When viewing the evidence presented by the State, including the video recording of the bodycam footage of the incident, in the light most favorable to the prosecution, a rational trier of fact could have found beyond a reasonable doubt that defendant committed the offense of obstructing a peace officer in violation of section 31-1(a) of the Code.

¶ 29 **B. Probable Cause**

¶ 30 Defendant argues that the trial court erred by denying his motion to dismiss on the basis that Heiny lacked probable cause to arrest him. Specifically, defendant maintains that he was arrested in violation of the fourth amendment because Heiny lacked probable cause to believe that there was a security violation, as the list of prohibited items posted by Lake County did not explicitly ban audio recorders. Defendant does not contest Heiny’s or Serzynski’s testimony on appeal.

¶ 31 When an appellate court reviews a ruling on a motion to suppress involving a question of probable cause or reasonable suspicion, we will accord great deference to the trial court's factual findings, and we will reverse those findings only if they are against the manifest weight of the evidence; however, we will review *de novo* the ultimate question of the defendant's legal challenge to the denial of his motion to suppress. *People v. Sorenson*, 196 Ill. 2d 425, 431-32 (2001).

¶ 32 Probable cause exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the person arrested has committed a crime. *People v. Sims*, 192 Ill. 2d 592, 614 (2000). The existence of probable cause to arrest depends upon the totality of the circumstances at the time of the arrest. *Id.* at 615.

¶ 33 Defendant's argument is based on the incorrect assumption that audio recorder devices must be explicitly listed as prohibited in the Lake County Courthouse. However, it was established that Heiny and U.S. Securities personnel possessed the authority to determine whether an item was prohibited even if it was not explicitly listed on the posted notice and defendant does not establish that the prohibition against audio recorders was unreasonable. Heiny informed defendant that his audio recorder was a prohibited item and would not be allowed in the building. Heiny also testified that before he arrested defendant, he told defendant that defendant was subject to bond conditions to "comply to requests from US Securities, courthouse officers, and deputies *** and not have any disturbances around the magnetometers or the courthouse." When defendant entered the courthouse with the audio recorder and when he continued to argue with Heiny at the security checkpoint, defendant was arrested for violating the conditions of his bond. Thus, at the time Heiny arrested defendant, the facts known to Heiny gave rise to probable cause to support the arrest.

¶ 34

C. Admission of Evidence of Bond Violation

¶ 35 In closing, the prosecutor read the bond order to the jury, which states that defendant is ordered to “follow all written or verbal directives given by court security personnel and courthouse deputies.” Defendant believes that reading the bond order conveyed to the jury that defendant must comply and had no right to argue. Although defendant did not object to the admission of the bond order, defendant requests that we consider this as plain error. He believes that he was substantially prejudiced because the use of the bond order effectively equated to a misstatement of the law.

¶ 36 The plain-error doctrine allows a reviewing court to remedy a “clear or obvious error” in two instances, regardless of the defendant’s forfeiture: (1) where the evidence in the case is so closely balanced that the jury’s guilty verdict may have resulted from the error and not the evidence; or (2) where the error is so serious that the defendant was denied a substantial right, and therefore, a fair trial. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). However, if there is no error at all, we need not reach the question of plain error. *Id.* (plain error doctrine requires “first” that an error occurred); *People v. Nicholas*, 218 Ill. 2d 104, 121 (2006) (where “there was no error at all,” there cannot be plain error).

¶ 37 In the present case, contrary to defendant’s belief, the prosecutor stated during closing argument that this case was not about a verbal debate or a verbal argument; it was about defendant trying to bring something into the courthouse and the fact that defendant was arguing with the officer or the security people may be a fact that the jury could consider, but it was not the “core of this case.” The prosecutor stated that this case was “the failure to comply, obstructing the officer.” The prosecutor merely read the bond order to the jury to show defendant knew about the existence of the order because Heiny and Serzynski both read the

order to him and explained it to him so that defendant would follow their orders, but defendant did not follow their directives. Accordingly, where no clear and obvious error occurred, we must reject defendant's plain error argument.

¶ 38 Defendant cites *People v. McCoy*, in support of his argument. In *McCoy*, 378 Ill. App. 3d 954 (2008), the court reversed the defendant's conviction because the prosecutor misstated the law of resisting a peace officer that a person does not have the right to argue with a police officer, the error was not corrected by jury instructions, and the error was found to be plain error where the evidence was closely balanced. *Id.* at 965-66. In the present case, the prosecutor did not misstate the law and the jury was instructed that "[t]he law does not prohibit a person from verbally arguing with a police officer about the validity of a police action." Furthermore, the evidence was not closely balanced.

¶ 39

D. Constitutional Claims

¶ 40

1. Due Process

¶ 41 Defendant argues that the bond order entered into evidence was void for vagueness and that, as-applied, was unconstitutional. Defendant's constitutional arguments are founded upon his inaccurate assumption that Heiny's power to arrest him was derived from the bail bond order. Rather, Heiny's authority to arrest defendant was based on his power to regulate entry into the courthouse, including the authority to issue reasonable rules for maintaining the safety and decorum of the building. 55 ILCS 5/3-6107; see *Ryan*, 45 F.3d at 1092. Accordingly, we reject defendant's due process argument.

¶ 42

2. Free Speech

¶ 43 Defendant next argues that his right to free speech under the First Amendment to the U.S. Constitution was abridged by his arrest for recording the sheriff's deputies and U.S. Securities

screeners while they were on duty in the foyer of the Lake County Courthouse. Defendant argues that his “[a]udio recording is entitled to First Amendment protection,” (*People v. Clark*, 2014 IL 115776, ¶ 18), and that “the right to record police is clearly established.”

¶ 44 Defendant specifically asserts that his “arrest was triggered based only on these expressive [free speech] actions [of possessing an audio recorder and verbal argument in the foyer of the courthouse]. This statement is wholly unsupported by the record. Defendant recognizes this. He says audio recording is protected by the First Amendment. Since audio recording requires one to have recorded, his possession of the recorder is also protected. First, as we stated previously, defendant was not arrested for arguing with the deputy. Second, the possession of a recording device is not an expressive action. The deputy had authority to restrict items which he believed posed a threat from the courthouse. Defendant had the ability to challenge the deputy’s decision without committing the criminal act of obstructing. As such, defendant’s prosecution for obstructing a peace officer has no implication of first amendment concerns since defendant was not penalized for “expressive actions.” Rather, he was prosecuted and found guilty for his illegal conduct of knowingly impeding Heiny in the performance of his duty to regulate what items individuals may bring into the Lake County Courthouse.

¶ 45

III. CONCLUSION

¶ 46 For the reasons stated, the judgment of the Circuit Court of Lake County is affirmed.

¶ 47 Affirmed.