

No. 1-10-3302

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 C 440091
)	
CRISTA NOEL,)	The Honorable
)	Thomas M. Tucker,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE EPSTEIN delivered the judgment of the court.
Justice Joseph Gordon and McBride concurred in the judgment.

ORDER

¶ 1 *Held:* Where the evidence was sufficient to convict defendant of resisting a peace officer, the judgment was affirmed; where the \$5 court system fee was improperly assessed, the fee was vacated.

¶ 2 Following a bench trial, defendant Crista Noel was convicted of resisting a peace officer, a misdemeanor, and sentenced to one year of conditional discharge and two days' imprisonment, time considered served. On appeal, defendant contests the sufficiency of the evidence asserting

that the testimony of the arresting officer was incredible, inconsistent, and impeached. She also contends that she was improperly charged a \$5 court system fee. We vacate the \$5 court system fee and affirm in all other respects.

¶ 3 The evidence showed that on January 1, 2009, in the vicinity of Cermak Road and Belleview Avenue in Westchester, Illinois, an altercation occurred between Officer Coltri and defendant. Defendant was arrested and subsequently charged with aggravated battery and resisting a peace officer.

¶ 4 At trial, Officer Coltri, who was in his police uniform and was driving a marked squad car, testified that at about 2:29 p.m. on January 1, 2009, he was in the vicinity of Cermak Road and Belleview Avenue. Coltri saw that Officer Newton had stopped a vehicle, and that a second vehicle was in front of the vehicle Newton pulled over. After speaking with Newton, Coltri pulled up to the second vehicle, which was driven by defendant. Coltri asked defendant if he could help her, and defendant responded, "Can I help you," in a sarcastic tone. Coltri advised defendant that if she did not move her car, he would write her a parking ticket. Defendant swore, told Coltri that he was not going to write her a ticket, and moved her car. Coltri saw defendant pull into a nearby parking lot. Coltri followed her and entered the license plate number into his computer because he wanted to know who the car belonged to and check with whom he was speaking.

¶ 5 While Coltri was in his car, he heard defendant swearing and screaming that he had better not be writing her a ticket, and saw that she was out of her car and coming towards him. He exited his patrol car and walked to the rear of his car. Defendant then approached Coltri and "chest bumped" him. Coltri advised defendant that she was under arrest and attempted to take

her into custody by trying to grab one of her hands and place handcuffs on her. Defendant resisted, pulled away, and struck Coltri with open hand slaps, punches, and kicks about the body and face. After Coltri got one handcuff on defendant, he called for help. Officer Newton arrived on the scene and assisted Coltri in detaining defendant. Specifically, Coltri pushed the front of defendant's body onto the hood of the car with the assistance of Newton. Newton had a taser with him and advised defendant that she would be tased if she did not stop struggling. After Newton's statement, she complied and was arrested.

¶ 6 On cross-examination, Officer Coltri testified that he believed he told Officer LaManna, who interviewed him after the incident, that he advised defendant that she was under arrest. Coltri also indicated that he testified at a preliminary hearing that defendant struck him on the front of his body, legs, and upper torso, but did not mention that he was hit in the face. Coltri indicated that when he stated in the preliminary hearing that he was struck in the upper torso, he was implying the upper portion of his body. Coltri further testified that the felony complaint he signed did not indicate that he was struck in the face, lower body, torso, or that he was chest bumped.

¶ 7 Officer Russell Newton testified that on the date and time in question he pulled over Pamela Tolbert for speeding. As he was writing Tolbert a ticket, he saw a second vehicle pull up in front of Tolbert's vehicle. A short time later, Officer Coltri arrived, spoke to the driver of the second vehicle, and then drove around the corner out of Newton's sight. Coltri subsequently asked Newton for help, and, when Newton arrived, he saw defendant struggling with Coltri, who was trying to arrest her. After advising defendant that he would tase her if she did not stop struggling, she complied.

¶ 8 Pamela Tolbert testified on behalf of defendant that on January 1, 2009, she and defendant, who were in separate cars, were driving to the westside of Chicago to drop off her car at her residence before they went to Wisconsin for a weekend trip. While they were driving, Tolbert was stopped by Officer Newton for a traffic violation. Tolbert called defendant and told her she was stopped by police for speeding, and defendant pulled over in front of Tolbert's car. Officer Coltri arrived on the scene and pulled up next to defendant's vehicle. Tolbert saw defendant drive her car into a nearby parking lot with Coltri following her. Tolbert then observed defendant exit her car and gesture as if she was asking a question. Coltri acted aggressively towards defendant, and wrestled with her as defendant's hands were up in the air "like a rag doll."

¶ 9 Defendant, who was five feet and five inches tall, 49 years old, and weighed 145 pounds, testified similarly to Tolbert. She also testified that when Officer Coltri, whom she knew to be a police officer, asked her if she needed help, she responded negatively and then asked him, without being sarcastic, if he needed any help. Coltri screamed at defendant, "what are you doing sitting here?" Defendant responded that Tolbert was her friend and that she was waiting for her to get her ticket. When Coltri told defendant that she was parked in a no parking zone, defendant disagreed and stated that she was not parked as her car was standing still with the engine running. Coltri instructed defendant that if she did not move her car, he would write her a parking ticket. Defendant complied and parked her car in a mall parking lot. Coltri followed defendant and blocked the exit. Defendant got out of her car, walked over to where Coltri was sitting in his car, and asked him if he was writing her a parking ticket. Coltri screamed at defendant, and defendant asked him why he was being so disrespectful. Coltri then jumped out of his car and

began hitting defendant about her body and face. Coltri tried to throw defendant head first into his car, but defendant avoided the impact, and Coltri tried to throw her to the ground. During the struggle, defendant yelled out, "I am not resisting arrest." Coltri eventually threw defendant onto the hood of his car and put handcuffs on her. Coltri never told her that she was under arrest, and only attacked her. Defendant suffered injuries to her face, head, hand, and thigh. She denied screaming, swearing, or striking Coltri with her hands or chest. She also denied that Officer Newton threatened her with a taser.

¶ 10 Matthew Martin testified that he was a paramedic, and that on January 1, 2009, he treated defendant who told him that she was attacked by police. Martin stated that defendant complained of left shoulder pain, an abrasion to her left temple, and minor abrasions to her right wrist and her left hand. Martin cleaned her wounds and gave her an ice pack for her shoulder pain.

¶ 11 Sergeant LaManna testified that he interviewed Officer Coltri as a complainant in this case, and that Coltri told him that defendant got close enough to chest bump him. LaManna did not recall if Coltri stated that defendant actually chest bumped him. LaManna further stated that Coltri never told him that he advised defendant that she was under arrest.

¶ 12 Maurice Allen testified that he is defendant's coworker and that she has a reputation for being a peaceful, law abiding citizen.

¶ 13 Following argument, the court found that the evidence was insufficient to convict defendant of aggravated battery to a police officer. However, the court found that there was sufficient evidence of resisting a police officer, and found her guilty of that offense.

¶ 14 On appeal, defendant contends that the State failed to prove her guilty beyond a

reasonable doubt. She specifically maintains that Officer Coltri's testimony was incredible, inconsistent, and impeached.

¶ 15 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the question for the reviewing court is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). This standard recognizes the responsibility of the trier of fact to resolve conflicts in testimony, weigh the evidence, and draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A reviewing court will not set aside a criminal conviction unless the evidence is so unreasonable or improbable as to raise a reasonable doubt of defendant's guilt. *People v. Hall*, 194 Ill. 2d 305, 330 (2000).

¶ 16 In order to convict defendant of resisting a peace officer, the State must prove that the defendant knowingly resisted or obstructed the performance by one known to the person to be a peace officer. 720 ILCS 5/31-1(a) (West 2008). Verbal resistance or argument alone, even through the use of abrasive language, is not a violation of the statute. *People v. Long*, 316 Ill. App. 3d 919, 927 (2000). Instead, the statute prohibits a person from committing a physical act of resistance or obstruction, *i.e.*, a physical act that impedes, hinders, interrupts, prevents, or delays the performance of the officer's duties. *People v. Kotlinski*, 2011 IL App (2d) 101251, ¶39, citing *People v. Raby*, 40 Ill. 2d 392, 399 (1968). The acts of struggling or wrestling with a police officer will support a conviction for resisting a peace officer, even if the underlying attempted arrest was unwarranted. *People v. Miller*, 199 Ill. App. 3d 603, 611 (1990).

¶ 17 Viewing the evidence in the light most favorable to the State, we find that a rational trier

of fact could have found defendant knowingly resisted Officer Coltri. The evidence shows that while Coltri was in his squad car, he heard defendant swearing and screaming that he better not be writing her a parking ticket, and saw that she was approaching him. Shortly after Coltri exited his vehicle, defendant "chest bumped" him. Coltri testified that he advised defendant that she was under arrest and attempted to take her into custody. However, defendant resisted, pulled away, and struck Coltri with open hand slaps, punches, and kicks about the body and face. Coltri was able to get one handcuff on defendant, and called for Officer Newton to assist him. Newton corroborated Coltri's testimony in part where he saw defendant resisting Coltri, and threatened to tase her unless she submitted. Moreover, defendant admitted that she knew Coltri was a police officer and yelled out during the struggle that she was not resisting arrest. See *Miller*, 199 Ill. App. 3d at 610-12 (evidence that defendant pushed, struggled, and wrestled with police was sufficient to support a conviction for resisting a peace officer).

¶ 18 Nevertheless, defendant contends that Coltri's testimony was incredible, inconsistent, and impeached. She points out that, although Coltri testified that he informed defendant that she was under arrest at trial, he never testified that he made such a statement at the preliminary hearing. Similarly, defendant indicates that Sergeant LaManna's testimony shows that Coltri never told him that he advised defendant that he was placing her under arrest. Defendant further maintains that although Coltri testified that defendant struck him in the face and chest bumped him, he made no such claims at the preliminary hearing, in the felony complaint, or in his interview with Sergeant LaManna. Moreover, defendant asserts that there are a number of important elements of Coltri's account that are never explained at all, *i.e.*, why Coltri followed defendant, blocked the exit to the parking lot, and ran her license plate number. Defendant also argued that the events

relayed by Coltri were fantastic where he claimed that she swore at him for no reason, he was unable to subdue her by himself, and, given the injuries defendant sustained, Coltri had a motive to make her appear to be the aggressor. Although defendant appears to want this court to reweigh the evidence, it is the responsibility of the trier of fact to resolve conflicts in testimony, weigh the evidence, and draw reasonable inferences therefrom. *Campbell*, 146 Ill. 2d at 375. Moreover, minor inconsistencies in a witness' testimony do not, of themselves, create reasonable doubt. *People v. Myles*, 257 Ill. App. 3d 872, 884 (1994). We thus find no reason to set aside defendant's conviction where the evidence was not so unreasonable as to raise a reasonable doubt of his guilt.

¶ 19 In reaching this conclusion we find *People v. Bush*, 4 Ill. App. 3d 669 (1972), relied on by defendant, distinguishable from the case at bar. In *Bush*, following a jury trial, the defendant, a 63-year-old man, was acquitted of public indecency but was convicted of resisting arrest. In reversing the resisting arrest conviction, the reviewing court held that the arresting officer's testimony was inconsistent with a report he had signed, defendant's serious injuries were not indicative of resisting arrest, and the jury found that the defendant did not commit the underlying crime. *Bush*, 4 Ill. App. 3d at 673-74. Most significantly, the officer was dressed in causal street attire rather than in uniform, and the reviewing court held that the defendant could reasonably have questioned whether or not the man was a police officer. *Bush*, 4 Ill. App. 3d at 673. Here, by contrast, there was no question defendant knew Officer Coltri was a police officer, any inconsistencies in Coltri's testimony were minor, and defendant's injuries were not inconsistent with resisting arrest. Moreover, the fact that defendant was acquitted of the charge of aggravated battery but convicted of resisting arrest is not evidence of inconsistent verdicts. See *People v.*

Diaz, 123 Ill. App. 3d 239, 244 (1984). This is particularly true here where the trier of fact was a judge and not a jury. See *People v. Guest*, 115 Ill. 2d 72, 108 (1986) (stating that in a bench trial, the judge is presumed to know the law and apply it properly).

¶ 20 Defendant next contends that she had a right to resist arrest by defending herself against Officer Coltri's excessive use of force. The record reveals, however, that defendant predicated her defense upon the alleged inconsistencies in Officer Coltri's testimony, and that Coltri attacked her. In fact, defense counsel specifically argued that defendant did not defend herself against Coltri when he argued during opening statements that, "[defendant] never resisted [Coltri's] attack in any way or resisted arrest in any way." Similarly, during closing argument, defense counsel argued that defendant "testified that she never resisted the officer" and, her testimony combined with her injuries creates a "reasonable doubt" for the charge of resisting.

¶ 21 Nevertheless, we find that defendant did not forfeit her self-defense claim on appeal. We agree with the State that a claim of self-defense is forfeited where the defendant fails to raise this affirmative defense at trial. See *People v. Woods*, 62 Ill. App. 3d 381, 386 (1978) (finding that the defendant could not properly raise his self-defense claim for the first time on appeal where it should have been raised as an affirmative defense at trial). However, in this case, defendant's self-defense claim is not forfeited as argued by the State because defendant raised this defense before and after trial. In defendant's second additional answer to discovery, defendant advised the State that, at trial, she may assert her "actions were a justifiable use of force." In defendant's posttrial motion, *i.e.*, motion for judgment notwithstanding the verdict, defendant argued that "if there was some evidence that Officer Coltri used unreasonable or excessive force," then the State failed to prove "beyond a reasonable doubt that [defendant] did not act in self-defense."

Therefore, defendant preserved her self-defense claim on appeal.

¶ 22 Turning to the merits, we note that a person is justified in the use of force against another when she reasonably believes that such conduct is necessary to defend herself against such other's imminent use of unlawful force. 720 ILCS 5/7-1(a) (West 2010); *People v. Brant*, 394 Ill. App. 3d 663, 671 (2009). Self-defense is an affirmative defense, the legal effect of which is to admit that the acts occurred, but to deny responsibility. *Brant*, 394 Ill. App. 3d at 671. Here, at trial, defendant did not even admit that she defended herself against Coltri. Instead, she repeatedly testified that she was attacked by police and did not retaliate. Because self-defense requires that the defendant admit to committing certain acts, and defendant failed to do so, she does not satisfy the elements of the defense.

¶ 23 Even if defendant's actions could be construed as defending herself, such actions were not necessary to evade the imminent use of unlawful force. As stated above, an individual may not use force to resist an arrest which she knows is being made by a peace officer, even if she believes that the arrest is unlawful. *Miller*, 199 Ill. App. 3d at 611. We acknowledge that this rule does not apply to a situation in which the officer uses excessive force. *People v. Bailey*, 108 Ill. App. 3d 392, 398 (1982). Here, however, defendant was not faced with an officer's use of excessive force. The evidence showed that after Officer Coltri advised defendant that she was under arrest, he reached out for one of her hands in order to handcuff her, and she pulled away and resisted. It was only after defendant refused to cooperate with the arrest that Coltri used any force at all against defendant, and, even then, the force was not excessive. Both Coltri and Officer Newman testified that defendant would not stop struggling until Newton threatened to use a taser against her. Self-defense is not an appropriate theory where a defendant resists arrests

and then officers use force to effectuate the arrest. *People v. Haynes*, 408 Ill. App. 3d 684, 689-91 (2011).

¶ 24 Finally, defendant contends, and the State agrees, that we must vacate the \$5 court system fee (55 ILCS 5/5-1101(a) (West 2008)) because she was not convicted of a vehicular violation and the plain language of the statute shows that the fee may be imposed only for violations of provisions that are not at issue here. See *People v. Williams*, 394 Ill. App. 3d 480, 483 (2009) (finding the court system fee applies only to vehicle offenses and vacating its imposition where the defendant was convicted of being an armed habitual offender). We agree.

¶ 25 For the foregoing reasons, we vacate the \$5 court system fee and affirm the judgment in all other respects.

¶ 26 Affirmed as modified.