

No. 1-10-3510

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 09 MC 2507
)	
WILLIAM R. BAUDIN,)	
)	Honorable Marguerite A. Quinn,
Defendant-Appellant.)	Judge Presiding.

Justice Murphy delivered the judgment of the court.

Presiding Justice Steele and Justice Neville concurred in the judgment.

ORDER

- ¶ 1 *HELD:* Where State produced evidence that defendant was agitated and aggressive and threatened physical harm to an emergency room nurse and had altercations with hospital security staff and police officers, trial court properly found defendant guilty of disorderly conduct.

- ¶ 2 *HELD:* Where police officers credibly testified that they interviewed defendant and informed him he was under arrest, defendant's acts of moving his hands and arms to avoid handcuffs and making his body go rigid in an attempt to refuse police officers' ability to move him constituted resisting a police officer.

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¶ 3 *HELD*: Where security tapes were erased by hospital pursuant to its normal operating procedure prior to defendant's motion to produce the videotapes, there was no *Brady* violation.

¶ 4 Following a June 22, 2010, bench trial, defendant, Randal Baudin, was convicted of disorderly conduct and two counts of resisting arrest related to a February 7, 2009, incident at Lutheran General Hospital in Park Ridge, Illinois ("Hospital"). Prior to trial, defendant filed a subpoena seeking copies of surveillance videos taken by cameras at the Hospital. On defendant's motion to compel to produce the videos, the State and representatives from the Hospital informed the trial court that videotapes are reused and taped over after seven days and the subpoena was not issued until February 17, 2009. Accordingly, the trial court entered an order denying the motion and noting that the videotapes were not longer in existence.

¶ 5 At the bench trial, the State and defendant both presented testimony of several witnesses. The trial court found the State's witnesses credible and that defendant was loud and combative and threatened Hospital staff, causing alarm and a breach of the peace sufficient to support the charge of disorderly conduct. The trial court also found the arresting officers credible and rejected the testimony of defendant and his sister that he did not resist arrest.

¶ 6 On appeal, defendant argues: that the State failed to prove defendant guilty of disorderly conduct beyond a reasonable doubt; the State failed to prove defendant guilty of resisting arrest; and that defendant suffered a due process violation where Hospital surveillance videos were destroyed before defendant filed a subpoena and protective order to produce the video tapes. For the following reasons, we affirm the judgment of the trial court.

¶ 7 I. BACKGROUND

¶ 8 Following the February 7, 2009, incident at the Hospital, defendant was arrested on

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charges of disorderly conduct and resisting arrest. On February 17, 2009, defendant filed two subpoenas that were served on the Hospital and Park Ridge police department that same day. Included in the subpoena were a request for the Hospital's protocol on videotaping and use of videotapes as well as footage from three areas of the Hospital from 5:00 p.m. to 7:30 p.m. on February 7, 2009. On February 23, 2009, defendant also filed a motion for protective order to preserve the requested videotapes and the court granted that motion on February 27, 2009.

¶ 9 In subsequent court dates, the State, and unsworn representatives from the Hospital, informed the trial court that videotapes are reused and taped over after seven days. Therefore, the video taken of the incident involving defendant was taped over and did not exist anymore. The representatives indicated that this was the practice at the hospital, but there was no specific written protocol for the Hospital to follow. The trial court entered an order with a finding that the subpoena did not issue until after the videotapes were reused, following the typical practice of the Hospital, and therefore the video of the incident no longer existed.

¶ 10 Prior to opening statements by the parties at trial, the State sought leave to amend the complaints against defendant. Counsel for defendant objected to the timeliness of the amendments, noting that the case had been pending for 15 months, but the trial court allowed the amendments and no further objection was made. The disorderly conduct complaint was amended to remove complainant Delilah Mendez's claims that defendant said "I am going to take your head off" and "if you point that hand at me, I'm going to take it off" and replaced it with the claim that defendant knowingly caused alarm by threatening bodily harm to Mendez.

¶ 11 The resisting arrest complaints were also amended to modify the language alleging how defendant knowingly obstructed the performance of Officer Tom Rechlicz and Sergeant Jean

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Delfosse of the Park Ridge police department. As with the disorderly conduct complaint, the amendments removed allegations of specific behavior. The amended complaints alleged that defendant knew the men were police officers acting within their official capacities and moved his arms, legs and head to prevent his arrest.

¶ 12 The State presented the testimony of Delilah Mendez, a staff nurse at the Hospital. On February 7, 2009, Mendez was assigned the triage position, the front desk, of the emergency room at the Hospital. At about 6:30 p.m., defendant entered the emergency room and approached Mendez while talking on his cellular phone. Mendez testified that, while still on his phone, defendant stated that he wanted to talk to a particular physician. Mendez did not recognize the physician's name and she told defendant that he was not an emergency room physician.

¶ 13 Mendez testified that she asked the receptionist to see if she could find any information concerning this doctor and defendant remained on his cell phone and paced around the waiting room and front desk. After a couple minutes, defendant came back to the desk and said that he wanted to see his mother, but did not give his mother's name when Mendez asked and he continued talking on his phone. Mendez testified that she checked to see if any ambulances were just reporting or incoming. After that, defendant returned to the desk and gave Mendez his mother's name. Mendez called the nurse tending to defendant's mother and was asked for a few minutes wait time. Mendez informed defendant that he would have to wait a few minutes and asked him to take a seat.

¶ 14 Mendez testified that defendant responded that he wanted to see his mom now. She again asked defendant to take a seat and put out her hand, attempting to indicate he should go to

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the waiting room to her left. In response, defendant loudly and aggressively told Mendez something to the effect that he was going to cut off her finger or her hand and mumbled something else. Mendez indicated that at this point she became concerned for the safety of the approximately ten individuals in the waiting room. She called security and informed them there was somebody not following directions.

¶ 15 While Mendez went to see defendant's mother to determine if there was any urgency to support defendant's behavior, security officers Music, Perez and Williams arrived. Mendez testified that defendant's mother was stable and the nurse was taking her vitals and conducting an initial assessment, a process that typically takes 15 minutes. When Mendez returned to the front, she heard defendant escalating the situation and saw him run into the main part of the hospital. Mendez did not receive any complaints about defendant, but she and the security officer contacted the Park Ridge police at this time because he had been aggressive and was running into other areas of the hospital.

¶ 16 Security officer Admir Music testified that he was dispatched to the emergency room along with officer Perez at approximately 6:30 p.m. on February 7, 2009, to assist with a disturbance. Music testified that they were informed that a nurse had been threatened. When they arrived, defendant was outside the triage area in a hallway. Defendant was on his cell phone and angrily screaming and yelling. The officers approached defendant, introduced themselves and attempted to calm him down, but defendant ignored them. Music testified that defendant was very upset and at some point ran away from the officers, down the hallway to the main hospital. Perez stayed at the front desk of the emergency room to talk with the nurse and Music alighted after defendant.

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¶ 17 Music testified that he met the third officer at the lobby to the main hospital and the officers and the nursing supervisor caught up with defendant near the front desk to the hospital. Defendant was still talking on his cell phone and also talking with the receptionist. The nursing supervisor could not calm defendant down, but he would not calm down and threatened that his son was a police officer and that he was going to sue. Defendant then pushed Music out of the way and they followed defendant back to triage. At this time, Park Ridge police officers took over.

¶ 18 Officer Rechlicz testified that when he arrived at the Hospital, he observed defendant walking toward him in front of two to three security guards. In the vestibule area, defendant appeared angry and agitated, immediately asking Rechlicz to get the security guards, whom he derisively referred to as "Keystone Cops," away from him. Rechlicz asked the security guards to let him handle the situation and they complied. However, when Rechlicz asked defendant what happened, defendant responded that he knew the former chief of police and other police officers in Park Ridge, that his sons were all police officers, and that defendant was a lawyer. Rechlicz testified that defendant was loud and very demonstrative.

¶ 19 Defendant explained to Rechlicz that his mother had open heart surgery and had been sent back to nursing home, but developed complications that day and was being transported back to the Hospital. Rechlicz testified that he again asked what happened. Defendant put his head down, took a deep breath and then answered his cellular phone. Defendant then returned the call after it was apparently disconnected. Finally, after his phone conversation, defendant indicated he was trying to see his mother but the "idiot" nurse in the triage area did not know the name of his mother's doctor and would not let him see his mother. Defendant stated that the security

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officers arrived and one of them pushed him. Sergeant Delfosse arrived at this point and then went into the Hospital.

¶ 20 Rechlicz testified that he again asked defendant what happened at the Hospital.

Defendant again received and answered a phone call. Defendant wanted to walk outside to the parking lot to talk on the phone, but since Rechlicz was standing between him and the door, defendant inquired if he was free to leave or being detained. Rechlicz responded that he was not through with his investigation and followed defendant outside.

¶ 21 Sergeant Delfosse returned from talking with Mendez and the officers placed defendant under arrest. Rechlicz testified that defendant actively resisted arrest, pulling away from Delfosse as he attempted to handcuff defendant. In response, Rechlicz grabbed defendant's left arm and shoulder area, but defendant continued to separate his hands to avoid being handcuffed. Defendant was screaming "Get the police tapes. Get the security tapes." and the officers informed defendant to stop resisting and that he was under arrest. Eventually the officers cuffed defendant and told him they would have to walk to the squad car.

¶ 22 Rechlicz testified that defendant continued to resist the officers. Defendant tightened his body and would not walk with them. Accordingly, the officers grabbed his upper body and forcibly walked him to the squad car. Once at the car, defendant complained of the handcuffs being too tight and pain in his right hand. With defendant's assurance of cooperation, the officers removed the handcuffs. However, defendant again tried to push away and thrashed his head around so the officers tried to control and rehandcuff defendant. Rechlicz thought defendant's pants may have fallen down a little while he struggled. In this process, Delfosse ended up with a cut on his hand from defendant's tooth. Rechlicz removed the handcuffs when

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defendant was secured in the squad car. Defendant did not attempt to get out of the squad car.

¶ 23 Sergeant Delfosse testified that he reported to the Hospital at approximately 6:30 p.m. on February 7, 2009, and encountered Rechlicz who was talking with defendant at the entrance to the emergency room. Delfosse continued inside to interview Mendez. She told him that defendant attempted to gain access to his mother, but when she told defendant that he would have to wait for a period of time until his mother was stabilized, "he became very agitated, irate, and threatened her" saying that he was going to cut her hand off and rip her head off.

¶ 24 Delfosse then returned to where defendant was with Rechlicz to place defendant under arrest for disorderly conduct. He testified that defendant was on his cellular phone and paused, looked at the officers, and walked away. Delfosse again informed defendant he was under arrest and when the officers attempted to detain defendant, he actively resisted.

¶ 25 Delfosse testified that defendant pulled his arms away, threw his arms in the air, and refused to listen to commands. The officers grabbed defendant's arms and eventually secured handcuffs on him. After a few minutes and moving defendant 25 feet, he complained of the right handcuff being too tight so the officers removed the handcuff. Defendant again tried to pull away, this time thrashing his head. Delfosse, Rechlicz and one staff member from the Hospital put defendant's arm back in the handcuff. Delfosse sustained a laceration to his left hand from defendant's teeth during this process. Delfosse did not recall defendant's pants falling down during this process.

¶ 26 Defendant presented the testimony of his sister Robin Livek. Livek testified that she was visiting her mother on February 7, 2009. Sometime after 4 p.m., her mother started vomiting and had severe diarrhea and an ambulance was called to take her to the Hospital. Livek reported

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to the emergency room at the Hospital and when she asked to see her mother, the woman was rude and told her to wait until she loaded paper into a printer. Livek testified that she eventually got the room number and went to see her mother. When her mother asked where defendant was, Livek returned to the front desk and asked if someone was being detained.

¶ 27 The nurse pointed down the hall to security guards who pointed outside where Livek saw her brother against a wall in the parking lot talking to a police officer. Livek heard defendant ask if he was going to be arrested and, if not, that he wanted to defuse the situation and see his mother. When he started walking away, Livek saw the officers suddenly yank defendant's arms behind him to get his wrists in handcuffs. She testified that despite defendant saying that his rotator cuff was injured and "killing him," the officers continued to pull his arms back and then walked him through the parking lot where Livek saw defendant's pants fall down to his knees. Livek testified that she asked the officers what was going on and they told her to leave or she would be arrested as well.

¶ 28 Livek testified that during much of defendant's conversation with the police she could not hear the police talking, but could understand defendant because he was so much louder. She never saw defendant struggle, but heard him repeat that his shoulder hurt. She said that his pants fall down as he walked across the parking lot, not as the result of any struggle. Livek did not talk with the police about how poorly she and defendant were treated at the Hospital.

¶ 29 Defendant testified that on February 7, 2009, he visited most of the day with his mother and Livek. He left around 4 p.m., but while driving home after his visit, Livek called him to tell him that their mother was being taken to the Hospital by ambulance. Defendant turned around and went to the emergency room of the Hospital.

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¶ 30 Defendant first talked with Mendez at the emergency room front desk when he arrived at the emergency room. Defendant testified that he explained that his mother had open heart surgery recently and said that she was sent via ambulance. He testified that he "Absolutely. Positively. Unequivocally" gave his mother's name and asked to see her. Mendez was unaware of his mother being en route and defendant asked if she could find his mother's doctor. He testified that Mendez abruptly and curtly stated that she could not do that and pointed to the woman next to her and said "talk to her" and left. Defendant testified that the other woman said she did not have time to look up the doctor.

¶ 31 Defendant went to the main desk of the Hospital where a woman informed him that they had no record of the doctor he sought. Defendant called his sister to find where they were and was informed that a different ambulance had to come for their mother and she was delayed. He returned to the emergency room and told Mendez that his mother was arriving shortly and he wanted to see her. Defendant testified that in response, Mendez pointed her finger at him and said "I told you." In a conversational tone, defendant told Mendez to stop pointing her finger at him, but never said he would cut off her finger or hand or tear off her head.

¶ 32 Defendant testified that not only does he not talk that way, his sister-in-law and daughter-in-law are nurses and he has the highest respect for nurses. Defendant testified that he did not like Mendez's attitude, finding her to be "rude, arrogant, inattentive and insensitive," but he did not get angry or agitated. Defendant testified that he "absolutely, positively, unequivocally, unabashedly, irrefutably" did not yell at Mendez or threaten her in any way.

¶ 33 After this conversation, defendant saw security guards and they walked into a hallway together. Defendant testified that at this time he felt he was being accosted as he was pushed

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against a wall and surrounded. He responded by telling the guards that they did not want to do that and pointed to the security camera down the hall. Defendant testified that in response, the guards backed off until the acting administrator arrived. Defendant requested to speak with her alone and told her his mother was sick and that he needed to see her. Defendant said that "[i]f we talked for two minutes, I'll eat my hat." He testified that she told him she'd get him right in to see her, but when she went into the back entrance of the emergency room, the guards told him he was not going in that way and they went to the front desk of the emergency room.

¶ 34 At this time, defendant called 911. Defendant testified that he later learned the Hospital also called the police and, despite claiming that both called the police "by mutual agreement," admitted that he did not discuss calling the police himself with anyone. When Officer Rechlicz arrived, defendant approached him and asked to speak alone because he was having problems with the guards. Defendant testified that he explained his mother's condition and that the guards pushed him and held him against a wall despite the presence of cameras. He testified that Rechlicz responded that they were not going to look at the video at that time of the "alleged incident."

¶ 35 Defendant testified that his son called him on his cellular phone and advised him to leave and defuse the situation. After talking with his son, defendant told Rechlicz that if they were not going to let him see his mother, he was going to leave. Defendant stated that he received no response. At this time, his sister approached within several feet. Defendant decided to leave and as he pivoted, he saw the sliding glass doors open and then felt his right arm "torqued up behind him, or attempted to be torqued up behind me." Defendant did not see until afterwards, though he sensed another individual working his left arm.

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¶ 36 Defendant testified that he said "you're killing me" and explained that he had a rotator cuff problem. The officers responded by saying "Now you're resisting. And the handcuff on the right hand came down like there's no tomorrow." Defendant testified that he talked to his sons, both police officers, who informed him that there is a way to properly handcuff a person without the pain he endured.

¶ 37 Defendant denied being told that he was under arrest, but testified that when he was "jumped and pulled out," he was told he was under arrest. He clarified that there was no mention of any charge or for what he was arrested. The officers then took him to the squad car, and his pants fell down to his knees in the process because he recently had lost a large amount of weight. The officers pulled his pants back up and put him in the back of the squad car, leaving him laying on the seat with the handcuffs on.

¶ 38 Defendant testified that at this time Delfosse came to the squad car and said "Oh, I'm so sorry. You're a lawyer? And that's your mom that had open heart surgery? Maybe we don't have to press charges, or maybe it can be a local ordinance." Defendant responded that he had no idea about charges and needed to see his mother, but Delfosse closed the door and he did not see him again.

¶ 39 Defendant was taken to the police station to be processed by Rechlicz. He testified that he was finally uncuffed when they arrive so that he could get out of the squad car. In the station, defendant was shackled to the wall. Defendant denied ever apologizing to Rechlicz for his behavior or acknowledging that Rechlicz had a difficult job to do.

¶ 40 The State called three rebuttal witnesses. Security guard John Williams testified that he spoke with Livek prior to the arrival of the Park Ridge police officers. Williams stated that he

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asked Livek to try and help calm defendant. Livek attempted to calm defendant, but told Williams there was probably nothing they could do to calm him down. Delfosse was recalled to rebut defendant's claim that he apologized and offered to reduce charges. Delfosse testified that he gave his standard offer to irrational people that, if they were to cooperate, they would try and allow them out without posting cash bond. Finally, Rechlicz was recalled to support the assertion that defendant apologized for his behavior.

¶ 41 The trial court found defendant guilty of disorderly conduct and resisting arrest. It opined that Mendez was a credible witness. Mendez's testimony, supported by other witnesses, that defendant was loud, combative and used fighting words supported a conviction for disorderly conduct. Likewise, the trial court found the police officers credible witnesses. Contrariwise, the trial court opined that Livek's testimony was inconsistent, against the evidence and incredible. It concluded that defendant's actions supported a finding that he resisted arrest. Defendant filed a motion for a new trial which was denied and this appeal followed.

¶ 42

II. ANALYSIS

¶ 43

A. Sufficiency of the Evidence

¶ 44 The State is required to present proof beyond a reasonable doubt of every necessary fact to find a defendant guilty of a crime. *In re Winship*, 397 U.S. 358, 364 (1970). In assessing the sufficiency of the evidence to sustain a verdict on appeal we must view the evidence in the light most favorable to the prosecution to determine if “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), citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *People v. Collins*, 106 Ill. 2d

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237, 261 (1985). This means that we must allow all reasonable inferences from the record in the favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 45

1. Amendment of Complaints

¶ 46 Within defendant's first issue presented to this court, he asserts that the trial court improperly allowed the State to amend the complaints against him right before trial began and the resulting amended complaints were insufficient. As the State notes, defense counsel only objected to the timeliness of the amendment and not to the sufficiency. Defendant notes that counsel specifically stated that was his initial objection and the trial court curtailed his efforts to object further. Moreover, he contends that this issue may be reviewed under the plain error rule. However, the State does not assert that this issue was forfeited under the waiver doctrine. Rather, the State notes that review of the sufficiency of a charging instrument is *de novo*. *People v. Swarthout*, 311 Ill. App. 3d 250, 256 (2000). Where such a claim is advanced for the first time on appeal, the State notes that our review is lenient and the instrument is sufficient where the accused is charged with enough specificity to allow preparation of his defense and allow pleading a resulting conviction as a bar to future prosecution arising out of the same conduct. *People v. DiLorenzo*, 169 Ill. 2d 318, 322 (1996).

¶ 47 First, the State properly notes that the Code of Criminal Procedure of 1963 allows amendment of an indictment, information or complaint at any time because of formal defects, in particular, the presence of unnecessary allegations. 725 ILCS 5/111-5(d) (West 2010). In this case, the complaints against defendant were amended to accomplish just that, to remove the surplusage of defendant's specific words and actions. Importantly, the essential elements of each

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crime remained in the complaints and the variance was neither material nor prejudicial. *People v. Collins*, 214 Ill. 2d 206, 219-220 (2005). The record further supports the lack of prejudice to defendant because he was properly served with the complaints, actively participated in discovery and motions directly relating to the charges contained in the complaint, and was prepared to defend himself from these allegations.

¶ 48

2. Disorderly Conduct

¶ 49 Defendant claims that the State failed to prove him guilty beyond a reasonable doubt of disorderly conduct. Defendant was charged under subsection (a)(1) of the disorderly conduct statute, which states:

"a) A person commits disorderly conduct when he knowingly:

- (1) Does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace." 720 ILCS 5/26-1(a)(1) (West 2010).

Determining whether a defendant is guilty of disorderly conduct is a highly fact-specific inquiry for both the elements of whether the conduct was reasonable or a breach of the peace. *People v. McLennon*, 2011 IL App (2d) 091299 ¶¶ 30-32. The act supporting a finding of a breach of the peace involves a threat to another or an effect on a surrounding crowd, that can occur in public or private, with or without overt threats or profane and abusive language. *Id.* These determinations are tied to the specific facts and circumstances of each case with the main purpose of the offense in mind to guard against one's right not to be molested or harassed, either mentally or physically, without justification. *Id.*

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¶ 50 Defendant's argument here basically requires this court to reject the trial court's credibility and determinations and accept his presentation of facts, in total. As noted above, this is not the standard of review we must follow, nor is it the proper inference to make. Rather, under *Cunningham*, we must allow all reasonable inferences in favor of the State. Furthermore, this court does not retry the defendant, but resolution of the credibility of witnesses and conflicts in evidence are matters within the province of the trier of fact and we grant deference to those findings. *People v. Rendak*, 2011 IL App (1 st) 082093 ¶ 28.

¶ 51 The trial court specifically found Mendez and the security and police officers to be credible witnesses while defendant and his sister were inconsistent and incredible witnesses. Accordingly, the evidence, in a light favorable to the State, presented was that defendant arrived at the Hospital to a busy emergency room and sought immediate access to his mother - who was not at the hospital yet because her ambulance was delayed. Defendant was agitated and came and went from the front desk several times while talking on his cell phone. Eventually, Mendez learned that defendant's mother had arrived and when defendant returned again, she informed him that he would have to wait a few minutes while his mother was treated and pointed toward the waiting room.

¶ 52 In response, defendant threatened bodily harm in a loud and aggressive manner. Security was called in response to defendant's actions to assure the safety of the visitors, patients and staff of the emergency room. Defendant's loud and aggressive behavior continued when security guards and, later, police officers arrived. These actions support a finding that defendant knowingly acted unreasonably and caused a breach of the peace by threatening Mendez and

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loudly and aggressively interacted with Mendez and other hospital staff, security guards and police officers.

¶ 53 Defendant's claims that case law supports reversal because a lack of evidence: that defendant knowingly or intentionally acted to disturb Mendez; of any upheaval to the emergency room; and of any significant threat or duration of interaction with Mendez, are unavailing.

Defendant argues that there was no "actual breach of the peace," the central requirement rising above merely tending to bring about a breach of peace. *People v. Trester*, 96 Ill. App. 3d 553 (1981). As noted above, the key of the disorderly conduct statute is to protect from unjustified mental or physical molestation or harassment. The cases cited by defendant are distinguishable and do not overcome Mendez's testimony that defendant was agitated, loud and threatened her.

See *People v. Cooper*, 32 Ill. App. 516 (1975) (involved section (a)(2) of statute involving telephone calls); *People v. Bradshaw*, 116 Ill. App. 3d 421 (1983) (defendant did not threaten anyone, but merely yelled obscenities and vulgarities outside a bar toward a bartender who ejected him); *People v. Floyd*, 278 Ill. App. 3d 568 (1996) (involved assault allegation).

¶ 54 These cases cannot overcome the testimony at trial found credible by the trier of fact. While defendant's behavior may not have been as egregious as other cases, particularly *McLennon*, where the defendant was found guilty for not only his loud and unreasonable manner but for swinging punches at medical staff, the evidence need not demonstrate such egregious actions. *McLennon*, 2011 IL App (2d) 091299 ¶¶ 37-38. Rather, as stated above, case law, including *McLennon*, requires a showing that he acted unreasonably and threatened Mendez. Mendez testified that she was taken aback and sufficiently concerned to call the police.

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around in his attempt to prevent being handcuffed and later thrashed around when the policemen tried to put the handcuffs back on him after they removed them due to defendant's complaints of pain. Defendant's thrashing caused an injury to Sergeant Delfosse's hand when his tooth hit his hand. Additionally, defendant made his body rigid and resisted walking toward the squad car with the policemen. The trial court opined that this testimony was credible.

¶ 59 This testimony is sufficient to support the convictions for resisting a peace officer. The case offered by defendant in his motion to cite additional authority, *People v. Kotlinski*, 2011 IL App (2d) 101251, supports the trial court's conclusion. The *Kotlinski* court addressed the statute at issue and noted that it " 'proscribe[s] only some physical act which imposes an obstacle which may impede, hinder, interrupt, prevent or delay the performance of the officer's duties, such as going limp, forcefully resisting arrest...' " *Id.* at ¶ 39, quoting *People v. Raby*, 40 Ill. 2d 392, 399 (1968). While the *Kotlinski* court reversed the defendant's conviction, it determined that the defendant did not impede, hinder, interrupt, prevent or delay the officer's duties as opposed to the scenario in *People v. Ostrowski*, 394 Ill. App. 3d 82, 98 (2009), where the defendant impeded the officers' ability to arrest him by struggling three to four minutes. *Kotlinski* at ¶ 48. That is precisely what the evidence shows in this case and, under *Kotlinski*, defendant "was properly found guilty of resisting a peace officer." *Id.* at ¶ 48.

¶ 60

B. Defendant's *Brady* Claim

¶ 61 Defendant next claims that the trial court erred in finding that *Brady v. Maryland*, 373 U.S. 83 (1963) was not violated. Under *Brady*, "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either

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to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id.* at 87. However, where a defendant does not show bad faith on the part of police, a failure to preserve potentially useful evidence does not constitute a denial of due process. *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988).

¶ 62 We agree with the State that, similar to the situation in *People v. Hobley*, 159 Ill. 2d 272, 308 (1994), there has been no showing of bad faith on the part of the State, there was independent, credible and corroborating evidence proving defendant's guilt, and there was no indication that the videotapes were ever in the possession or control or available to the State or requested prior to their destruction. Accordingly, as in *Hobley*, without this proof there could be no obligation to preserve or turnover the evidence and no *Brady* violation.

¶ 63

III. CONCLUSION

¶ 64 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 65 Affirmed.