

No. 1-11-0762

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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
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 MC4 5437
)	
GREGG MOORE,)	Honorable
)	Neil H. Cohen,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Taylor concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant's behavior impeded officer's duty to keep peace and maintain order in a courthouse, evidence was sufficient to prove defendant guilty of obstructing a peace officer; conviction affirmed.

¶ 2 Following a jury trial, defendant Gregg Moore was convicted of obstructing a peace officer and sentenced to 30 days in jail. On appeal, defendant contends the State failed to prove that he knowingly obstructed a peace officer's performance. We affirm.

¶ 3 The complaint alleged that defendant committed the offense of obstructing a peace officer:

"[I]n that he knowingly obstructed the performance of Sgt. Giannini #1108 of an authorized act within his official capacity, knowing Sgt. Giannini #1108 to be a peace officer engaged in the execution of his official duties, in that Gregg Moore refused to comply with lawful orders [to] stop shouting in the hallway and leave the [M]aywood courthouse."

¶ 4 Sergeant Linda Ribaldo testified that on July 23, 2010 at around 3:30 p.m., she received a request to remove a man from the second floor clerk's office in the Maywood courthouse. When Sergeant Ribaldo arrived, she saw defendant standing at the counter, shaking paperwork and loudly speaking to employees. After Sergeant Ribaldo asked defendant to leave, defendant replied that he would, but he wanted to show her some paperwork first. Defendant exited the clerk's office after being asked to leave a second time. Sergeant Ribaldo then told defendant to leave the building, and defendant, who was agitated and flailing his arms, replied that he had a right to be there and he did not want to wait for his bus outside in the heat. Sergeant Ribaldo told defendant that he could remain in the building if he lowered his voice and remained calm. Defendant went down the escalator as Sergeant Ribaldo and other officers followed. Once on the first floor, the officers heard yelling and saw defendant standing in front of the information desk, saying he was drinking alcohol and holding a metal cup. Sergeant Mario Giannini then "walked towards the subject and placed him under arrest."

¶ 5 Sergeant Giannini testified that on July 23, he was alerted by Sergeant Ribaldo to a disturbance outside the second floor clerk's office. When he arrived, defendant appeared extremely agitated. Sergeant Giannini was informed that defendant had been told he could wait for his bus on the first floor if he remained calm. Defendant went down the escalator as Sergeant Giannini and other officers followed. On the first floor, Sergeant Giannini saw defendant

standing by the information booth, holding a cup and yelling at two deputies, "Fuck you, you're harassing me, I'm drinking my alcohol. I'm not leaving***Stop harassing me. Leave me alone." Sergeant Giannini approached defendant and said, "Sir, calm down. Stop using profanity or you'll be asked to leave the building." Defendant was angry and responded, "Fuck you. I'm not leaving. You're harassing me." Sergeant Giannini then ordered him to leave, stating, "I'm ordering you at this time to leave the building immediately." In response to Sergeant Giannini's order, defendant said, "I'm not leaving. I'm finishing my alcohol." Sergeant Giannini then placed defendant in custody. Sergeant Giannini and defendant's encounter lasted 30 or 40 seconds. Sergeant Giannini testified that his responsibilities are to keep peace and maintain order for the safety and welfare of the civilian public and court personnel and staff. To accomplish those responsibilities, he is authorized to make arrests and ask someone to leave when the security and integrity of the courthouse is violated.

¶ 6 Defendant testified that he went to the clerk's office on July 23 to pick up a form that would allow him to reinstate an expungement case. He denied that he had been upset. After interacting with various employees and an officer, defendant left the clerk's office. An officer told defendant to leave the building, but when defendant refused because he did not want to wait outside in the heat, the officer permitted him to wait downstairs. Defendant proceeded to the first floor and waited by the gate. One officer then told defendant to leave the building and another officer asked defendant what he was drinking. He responded he was "taking alcohol" because he did not like that question and does not drink alcohol, but on cross-examination, denied that he told the officer he was drinking alcohol. An officer smelled his cup and directed defendant to go outside. Defendant said "okay" and asked to use the washroom first, but instead he was arrested.

¶ 7 Defendant presented four witnesses who testified to his actions inside the clerk's office on the second floor. Krishnakant Patel, a customer service employee of the clerk's office, testified that on July 23, he went to his manager because he was unable to answer defendant's question. Krishnakant did not call security or ask his manager to call security, and did not observe anything that occurred on the first floor.

¶ 8 Hemang Patel, an employee of the clerk's office, testified that on July 23, he arrived at the clerk's office around 3:15 or 3:30 p.m. and did not see defendant. Hemang denied telling defendant that he would call the sheriff if defendant returned to the clerk's office.

¶ 9 James Gianopulos, who was working as the acting counter manager in the clerk's office on July 23, testified that he met defendant at the counter after he received complaints from employees that defendant was being disruptive. Gianopulos observed defendant raising his hands, talking loudly, and not cooperating with employees. Gianopulos called security out of a concern for keeping order in the clerk's office.

¶ 10 Sean Harvey, who was working in the clerk's office on July 23, testified that in the course of a discussion with defendant about an expungement, he informed defendant he had missed a court date. Harvey denied that defendant was upset and waved papers at him. An investigator identified as Frank approached Harvey, and when questioned, Harvey answered that everything was fine. Defendant talked in a loud voice to Gianopulos and walked out of the clerk's office by himself, followed by officers. Harvey did not see anything that occurred on the first floor.

¶ 11 The jury found defendant guilty of obstructing a peace officer. Defendant was sentenced to 30 days in jail.

¶ 12 On appeal, defendant contends his conviction should be reversed because the State failed to prove that he knowingly obstructed Sergeant Giannini's performance. In particular, defendant argues the State did not prove that he obstructed Sergeant Giannini's ability to carry out his

lawful duties. Additionally, defendant contends he did not have the mental state required for the offense because his statements to Sergeant Giannini were an argument about the validity of Sergeant Giannini's order. Finally, defendant argues that Sergeant Giannini's testimony is insufficient to sustain his conviction because it was contradicted by Sergeant Ribaldo.

¶ 13 When a defendant challenges the sufficiency of the evidence, "the relevant question is 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.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). It is not the reviewing court's function to retry the defendant. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). The weight to be given the witnesses' testimony, credibility of the witnesses, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact. *Id.* We will not substitute our judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of witnesses. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). The trier of fact's verdict will not be overturned unless it is so unreasonable, improbable, and unsatisfactory as to leave a reasonable doubt to the defendant's guilt. *People v. Brown*, 169 Ill. 2d 132, 152 (1996).

¶ 14 To sustain a conviction for obstructing a peace officer, the State must prove that a person knowingly obstructed the performance by someone known to the person to be a peace officer of an authorized act within his official capacity. 720 ILCS 5/31-1(a) (West 2010). Defendant only challenges that he knowingly obstructed Sergeant Giannini.

¶ 15 This offense does not require proof of a physical act. *People v. Baskerville*, 2012 IL 111056, ¶ 23, 29. In determining whether conduct constitutes an obstruction, the key inquiry is whether the conduct created an obstacle that impeded or hindered the officer in the performance

of his authorized duties. *Id.* at ¶ 23. The trier of fact answers this inquiry based on the facts and circumstances of each case. *Id.* Here, the evidence sufficiently supports the trial court's finding that defendant obstructed a peace officer. Sergeant Giannini testified that he has a duty to keep peace and maintain order for the safety and welfare of the public and court employees. This duty authorizes him to ask a person to leave the courthouse and make an arrest if the safety and integrity of the courthouse is violated. Sergeant Giannini first encountered defendant after he was called to assist Sergeant Ribaldo on the second floor, where defendant appeared extremely agitated. Knowing that defendant had been told he could wait for a bus on the first floor if he remained calm, Sergeant Giannini and other officers followed defendant down the escalator. Upon seeing defendant yelling at two security deputies on the first floor, Officer Giannini told defendant to stop using profanity or he would be asked to leave the building. In response, defendant said, "Fuck you. I'm not leaving. You're harassing me," and then refused Officer Giannini's subsequent order to leave. Defendant impeded Sergeant Giannini's duty to keep peace and maintain order when he yelled at the deputies on the first floor, continued to use profanity after being told to stop, and then refused directions to leave. Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find beyond a reasonable doubt that defendant obstructed Sergeant Giannini's performance.

¶ 16 This result is consistent with *People v. Nasolo*, 2012 IL App (2nd) 101059, ¶ 13 (finding obstruction when defendant completely refused to be fingerprinted or photographed during the booking process) and *People v. Gordon*, 408 Ill. App. 3d 1009, 1017 (2011) (finding obstruction when, during a search of a stopped vehicle, defendant yelled profanities at officers and stood in between the stopped vehicle and another vehicle and refused to leave despite being directed to do so 5 to 15 times). Like the defendants in *Nasolo* and *Gordon*, here defendant completely refused an order by an officer and prevented an officer from carrying out a duty—here, keeping

peace and maintaining order in the courthouse. In discussing *Gordon* and *People v. Synnott*, 349 Ill. App. 3d 223, 224, 229 (2004) (finding obstruction when, during a stop, the defendant refused to leave his car after being ordered to do so four times, and grabbed his steering wheel before ultimately complying), defendant seems to suggest that Sergeant Giannini should have given defendant more of an opportunity to comply before arresting him. However, *Gordon* and *Synnott* do not establish a minimum number of times that an officer must order a defendant to take or refrain from a particular action before arresting him. A mere refusal of an officer's lawful order to leave can constitute interference with the officer in the discharge of his duties. *City of Chicago v. Meyer*, 44 Ill. 2d 1, 6 (1969). Further, defendant's interaction with Sergeant Giannini began on the second floor, when Sergeant Giannini was called to assist Sergeant Ribaldo, and continued on the first floor, when defendant refused to follow Sergeant Giannini's directions.

¶ 17 Regarding the required mental state to obstruct a peace officer, the statute at issue states that defendant must *knowingly* obstruct a peace officer. (Emphasis added.) 720 ILCS 5/31-1(a) (West 2010). An individual acts knowingly when he is consciously aware that a result is practically certain to be caused by his conduct. 720 ILCS 5/4-5(b) (West 2010). Defendant correctly notes that verbal resistance or argument alone, even the use of abusive language, is permitted, and a person may argue with a police officer about the validity of a police action (*People v. Berardi*, 407 Ill. App. 3d 575, 582, 583 (2011)). Here, however, we find that defendant made his statements to obstruct Sergeant Giannini, rather than to merely verbally resist or argue about the validity of the order. Defendant's statements—"Fuck you. I'm not leaving. You're harassing me" and "I'm not leaving. I'm finishing my alcohol"—are simply statements of refusal. Defendant was told he could wait on the first floor if he was quiet and calm, and then he violated this condition by angrily using profanities and refusing to leave.

Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find that defendant's obstruction was knowing.

¶ 18 We reject defendant's argument that comparing his statements on the second floor with his statements on the first floor shows he was making a verbal challenge. When he was outside the clerk's office, defendant stated he would leave once he showed an officer his paperwork, he had a right to be there, he did not want to wait in the heat, and then he ultimately complied with the officer's orders. Defendant's behavior was of an entirely different character on the first floor, where he continually made statements of pure refusal. Defendant's reliance on *Berardi*, 407 Ill. App. 3d 575, is not helpful. There, before the defendant's "almost immediate acquiescence" to an officer's authority, the defendant repeatedly expressed his right to be present in a city office because of his position as an alderman. *Berardi*, 407 Ill. App. 3d at 580, 582. Accordingly, the court found that the defendant's statements were a verbal challenge to the officer's authority. *Id.* at 584. Here, defendant's statements to Sergeant Giannini consisted only of assertions that he would not leave, and he completely refused to comply with the order given to him.

¶ 19 That Sergeant Giannini's testimony differed from Sergeant Ribaldo's does not change our result. Defendant observes that Sergeant Ribaldo did not testify that defendant used profanity, was ordered to calm down, and refused an order to leave. Sergeant Ribaldo's description of Sergeant Giannini and defendant's interaction consisted of her testimony that after seeing defendant in front of the information desk, "Sergeant Giannini walked towards the subject and placed him under arrest." We note that it is the responsibility of the trier of fact to fairly resolve conflicts in the evidence, weigh the evidence, and draw reasonable inferences. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). Testimony may be found insufficient only where the evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). Based on its verdict, the

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jury found Sergeant Giannini to be credible. His testimony was not so unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt of defendant's guilt.

¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 21 Affirmed.