

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).

2013 IL App (4th) 120208-U
NO. 4-12-0208
IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

FILED
August 20, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
JOHN E. WILLIAMS,)	No. 04CM45
Defendant-Appellant.)	
)	Honorable
)	David W. Butler,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Steigmann and Justice Turner concurred in the judgment.

ORDER

- ¶ 1 *Held:* The State presented sufficient evidence to sustain defendant's conviction for resisting a peace officer (720 ILCS 5/31-1(a) (West 2002)).
- ¶ 2 In January 2004, the State charged defendant with resisting a peace officer in violation of section 31-1(a) of the Criminal Code of 1961 (Code) (720 ILCS 5/31-1(a) (West 2002)). In July 2011, a jury found defendant guilty of that offense. Based on an agreed-upon recommendation between the State and defendant, the court sentenced defendant to four days in jail, with credit for two days served and day-for-day good-time credit to apply, and ordered him to pay a \$300 fine, a \$200 Crime Detection Network fine, and a Violent Crime Victims Assistance fine. Defendant appeals, arguing the State failed to present sufficient evidence to sustain his conviction for resisting a peace officer. We disagree and affirm.

¶ 3

I. BACKGROUND

¶ 4 In January 2004, the State filed an information charging defendant with resisting a peace officer (720 ILCS 5/31-1(a) (West 2002)). After years of continuances, a jury trial was held in July 2011. The following pertinent facts were gleaned from testimony presented at trial.

¶ 5

A. The State's Evidence

¶ 6 Officer Donald Knapp testified that on December 5, 2003, he was working as a captain, supervising investigations, with the Illinois State University (ISU) police department. Shortly after noon, Knapp arrived at defendant's residence on McLean Street in Bloomington, Illinois, in an unmarked police vehicle. Knapp's purpose was to arrest defendant for committing criminal trespass on the campus of ISU. Detective Julie Sheppelman of the ISU police department rode in the passenger seat of the vehicle Knapp was driving. Knapp had never met defendant prior to this incident and he did not secure a warrant for defendant's arrest.

¶ 7

Officer Knapp and Detective Sheppelman wore plain clothes. Knapp recalled wearing a long-sleeve shirt, a jacket (either a sport coat or a long jacket), and khaki pants. Pursuant to ISU police department policy regarding plainclothes officers, Knapp covered his gun with his jacket. Knapp carried two badges on his person; one was attached to his belt, next to his gun, and the other was kept in a wallet-type case he carried in his pocket. Each badge was star-shaped, approximately two to three inches wide, and bore the words "Illinois State University Police Department" as well as Knapp's badge number.

¶ 8

Officer Knapp arrived at defendant's house immediately after a vehicle being driven by defendant's wife, Judith Williams, pulled into defendant's driveway. Knapp saw defendant in the passenger seat of that vehicle. Knapp pulled his vehicle into defendant's

driveway, behind the vehicle in which defendant was riding. Officer Hosey of the ISU police department, who also wore plain clothes, arrived in a separate unmarked police vehicle shortly after Knapp and Detective Sheppelman arrived.

¶ 9 The passenger side window of the vehicle in which defendant was riding was rolled down. After pulling into the driveway, Officer Knapp exited his vehicle, approached the passenger side of the vehicle defendant was in, and opened the passenger door. Knapp placed his body between the door and defendant, identified himself as a police officer, displayed the badge he kept in the wallet-type case, informed defendant he was under arrest, informed defendant why he was under arrest, and ordered defendant to get out of the vehicle.

¶ 10 When asked what defendant did next, Officer Knapp testified, as follows:

"Well we had—there was some conversation, and I don't remember the specifics. He refused to get out of the car. He tried to close the door at one point, but I was in a position where he couldn't do that, and frankly, that was on purpose. There was some more conversation. I told him at least twice and maybe three times, [']you're under arrest, get out of the car, police,['] you know. And I have my badge, showing him my badge this whole time."

¶ 11 Officer Knapp testified that Officer Hosey arrived while Knapp was "trying to talk [defendant] into getting out of the car rather than having to fight with him." Defendant was arguing with Knapp about the reason for the arrest. Hosey, who weighed between 250 and 290 pounds at the time, stood silently for a moment and watched the interaction between Knapp and defendant. Knapp testified about what happened next as follows:

"Q. And during the—while Officer Hosey was standing there, did the defendant ever exit the vehicle?

A. No.

Q. What did Officer Hosey do when the defendant did not exit the vehicle?

A. Eventually he just simply picked him up by the lapels of his coat and lifted him out of the vehicle.

Q. What did he do with him then?

A. He put him on the ground, and [defendant] struggled for a little bit. But as soon as we got one cuff on one wrist, then he kind of quit struggling. And we were—or at least I was, telling him over and over again, [']quit fighting, John. It's not worth it, just—you're under arrest. You have to go with us.['] And as I said, once we got one arm cuffed, then he quit fighting. Or resisting or struggling, I guess, would be the best word."

After removing defendant from the vehicle, Hosey placed his body on top of defendant. Knapp testified defendant "was kind of trying to move his arms around." It took "a few seconds" to get control of defendant's arm and place a handcuff on his wrist. Once defendant knew one wrist was cuffed, "he quit all sort of resistance."

¶ 12 Officer Knapp initially testified the entire incident took between one and two minutes, plus "a little struggle on the ground." Knapp then stated the incident certainly took less than five minutes, but he then stated he did not know exactly how long it took.

¶ 13 Detective Sheppelman testified that, after arriving at defendant's house and pulling in the driveway, she and Officer Knapp exited the unmarked police vehicle at the same time. Sheppelman testified defendant opened the passenger-side door of the vehicle he was riding in. Knapp identified himself as a police officer and displayed his badge to defendant, then told defendant he was under arrest for "being on campus." Knapp had his badge "out there long enough for somebody to see it." Knapp told defendant to get out of the vehicle at least twice. Defendant refused to exit the vehicle and attempted to close the door but was prevented from doing so because Knapp "stepped in front of the door." At one point, defendant said he was "not going to be arrested." (On cross-examination, Sheppelman confirmed defendant said, "I don't want to be arrested.") When Officer Hosey arrived, he pulled defendant from the vehicle and placed him under arrest.

¶ 14 B. Defendant's Motion for a Directed Verdict of Not Guilty

¶ 15 After the State rested, defendant moved for a directed verdict of not guilty. See 725 ILCS 5/115-4(k) (West 2010). Citing *People v. Berardi*, 407 Ill. App. 3d 575, 948 N.E.2d 98 (2011), defendant argued in support of his motion, in pertinent part, as follows:

"[S]ection 31-1, given a reasonable and natural construction, it does not prescribe [*sic*] that mere argument with the police about the validity of an arrest or other police action, but prescribes [*sic*] 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, or physically aiding a third party to avoid arrest.

And in this case, we have a very short time[]frame. We have only—well, Officer Knapp's testimony was that my client asked him who he was. And somewhere in this very tiny time[] frame, there's obviously a contradiction of the testimony as to who opened the car door. And Officer Knapp, who was closest to the car door, testified very clearly his butt was there. So [defendant] did not obstruct or impede, he just sat there. And underscoring that is the fact that Officer Hosey was able to just lift him right up out of the car and put him down on the ground. So that seems to me to not indicate actionable resisting arrest, Your Honor.

* * *

There's no physical act on [defendant's] part." The trial court denied defendant's motion for a directed verdict.

¶ 16

C. Defendant's Evidence

¶ 17

Following the court's denial of defendant's motion for a directed verdict, Judith Williams testified that when Officer Knapp approached the passenger side of the vehicle, defendant asked Knapp who he was and Knapp did not respond. After defendant asked Knapp who he was, defendant was removed from the vehicle "very quickly." Judith exited the car from the driver's side door after defendant was removed. According to Judith, she did not see identification on any of the officers, none of them identified themselves, and none of them told defendant he was under arrest. Judith never saw defendant "physically obstruct" the officers.

While Officer Hosey was on top of defendant, defendant told Judith to call the police. Detective Sheppelman was blocking Judith with her body to prevent Judith from going into her house. Sheppelman knocked Judith's cell phone out of her hand.

¶ 18 On cross-examination, Judith testified that she recalled Detective Sheppelman wearing shorts, a shirt, and a jacket. She recalled Officer Knapp wearing a T-shirt, jeans, and a trench coat. Judith testified that, after defendant told her to call the police, she called the front desk of the Bloomington police department directly, as opposed to calling 9-1-1, because she had the front desk number programmed on her phone. However, Judith also testified that she made that call from her neighbor's house because her phone was not working and Sheppelman had knocked the phone out of her hand.

¶ 19 Defendant testified that he twice asked Officer Knapp who he was and Knapp did not answer. Knapp never said anything to defendant while defendant was in the vehicle. After defendant asked Knapp who he was, defendant was pulled from the vehicle "almost immediately." Defendant never saw a badge during the incident. Defendant told Judith to call the police because he "didn't know who these people were yet."

¶ 20 D. The State's Rebuttal, Defendant's Surrebuttal, and the Jury's Verdict

¶ 21 In rebuttal, the State called Detective Sheppelman, who testified, in pertinent part, (1) defendant might have told Judith to call the police, (2) Sheppelman would not have been wearing shorts, and (3) she did not recall knocking Judith's cell phone from her hand.

¶ 22 Defendant testified briefly in surrebuttal that he recalled retrieving Judith's cell phone from the jail when he was checking out.

¶ 23 The jury found defendant guilty of resisting a peace officer.

¶ 24

E. Defendant's Posttrial Motion

¶ 25 In August 2011, defendant filed a motion for judgment notwithstanding the verdict, or, in the alternative, for a new trial. In support of the motion, defendant asserted, in pertinent part, the State failed to prove him guilty beyond a reasonable doubt because the evidence showed, at most, that defendant merely argued with the police officer and "there was no evidence he obstructed the officer." The trial court denied defendant's motion.

¶ 26 This appeal followed.

¶ 27

II. ANALYSIS

¶ 28 Defendant asserts the State failed to present sufficient evidence to sustain his conviction for resisting a peace officer (720 ILCS 5/31-1(a) (West 2002)).

¶ 29

A. Standard of Review

¶ 30 When considering a challenge to the sufficiency of the evidence in a criminal case, our function is not to retry the defendant. *People v. Lloyd*, 2013 IL 113510, ¶ 42, 987 N.E.2d 386. Rather, our inquiry 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 offense beyond a reasonable doubt. *Id.* This means that we must allow all reasonable inferences from the record in favor of the prosecution. *Id.* "We will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217, 824 N.E.2d 262, 267-68 (2005).

¶ 31

B. The Offense of Resisting a Peace Officer

¶ 32

Section 31-1(a) of the Code provides as follows:

"A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer or correctional institution employee of any authorized act within his official capacity commits a Class A misdemeanor." 720 ILCS 5/31-1(a) (West 2002).

¶ 33 In *People v. Raby*, 40 Ill. 2d 392, 398-99, 240 N.E.2d 595, 599 (1968), the supreme court expounded upon the meanings of the terms "resists" and "obstructs," as used in section 31-1(a) of the Code, as follows:

"[T]he statutory terms 'convey commonly recognized meanings. "Resisting" or "resistance" means "withstanding the force or effect of" or the "exertion of oneself to counteract or defeat". "Obstruct" means "to be or come in the way of". These terms are alike in that they imply some physical act or exertion. Given a reasonable and natural construction, these terms do not proscribe mere argument with a policeman about the validity of an arrest or other police action, but proscribe 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 or physically aiding a third party to avoid arrest.' [Landry v. Daley, 280 F. Supp. 938, 959 (N.D. Ill., 1968).]"

¶ 34 In *People v. Baskerville*, 2012 IL 111056, ¶ 25, 963 N.E.2d 898, the court explained that " 'resist' implies some type of physical exertion in relation to the officer's actions."

¶ 35 This court has said, "[R]esisting arrest is a physical act that necessarily involves a physical struggle. It does not potentially involve the broad range of actions that obstructing a peace officer can involve." *People v. Meister*, 289 Ill. App. 3d 337, 343, 682 N.E.2d 306, 309 (1997) (quoting *People v. Lauer*, 273 Ill. App. 3d 469, 474, 653 N.E.2d 30, 33 (1995)).

¶ 36 C. The State Presented Sufficient Evidence To Sustain Defendant's Conviction for Resisting a Peace Officer

¶ 37 Defendant asserts the State failed to present sufficient evidence to sustain his conviction. Specifically, defendant argues "[he] did nothing to physically resist Officer Knapp in performing his authorized duties. *** Absent a physical act of resistance on the part of the defendant, a conviction for resisting a peace officer cannot be sustained. [Defendant's] conviction must be reversed."

¶ 38 Contrary to defendant's assertions at trial and on appeal, the evidence presented at trial showed defendant did not simply argue with the officer; he engaged in physical acts of resistance. Specifically, instead of complying with the officer's order to exit the vehicle, defendant caused his body to remain in a seated position within the vehicle. By maintaining his body in a seated position within the vehicle, defendant created an obstacle which temporarily counteracted, impeded, hindered, and delayed the officer's ability to perform an authorized act. See *Raby*, 40 Ill. 2d at 399, 240 N.E.2d at 599. Moreover, Knapp and Detective Sheppelman both testified defendant attempted to shut the car door while Knapp was blocking it and ordering defendant out of the vehicle. Knapp also testified that defendant struggled briefly after being removed from the car by Officer Hosey. Both Knapp and Sheppelman testified Knapp identified himself as a police officer, displayed his badge to defendant, and informed defendant he was

under arrest for trespassing. Although defendant and Judith testified that none of the officers identified themselves or told defendant he was under arrest, the jury was entitled to find defendant's and Judith's testimony less credible than that of Knapp and Sheppelman.

¶ 39 Looking at the evidence in the light most favorable to the prosecution, the evidence was sufficient to allow a rational trier of fact to find that defendant (1) knew Knapp was a police officer attempting to make an lawful arrest and (2) resisted Knapp's performance of that duty by physically attempting to shut the car door and struggling with Officer Hosey after being removed from the car. Accordingly, the State presented sufficient evidence to sustain defendant's conviction for resisting a peace officer.

¶ 40 We note defendant's opening brief challenges the sufficiency of the evidence presented at trial but explicitly states that no issue is raised challenging the sufficiency of the charging instrument. The argument in defendant's reply brief, however, focuses only on the sufficiency of the charging instrument and does not address the State's arguments regarding the sufficiency of the evidence presented at trial. Pursuant to Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013), defendant's challenge to the sufficiency of the charging instrument, to the extent he raises the issue in his reply brief, is forfeited.

¶ 41 We further note, however, that even if the sufficiency of the charging instrument were properly before this court for consideration, our review of the record suggests the result would be the same. When challenged for the first time on appeal, a charging instrument will be deemed sufficient if it " 'apprised the accused of the precise offense charged with sufficient specificity to prepare his defense and allow pleading a resulting conviction as a bar to future prosecution arising out of the same conduct.' " *People v. Smith*, 337 Ill. App. 3d 819, 823, 786

N.E.2d 1121, 1124 (2003) (quoting *People v. Pujoue*, 61 Ill. 2d 335, 339, 335 N.E.2d 437, 440 (1975)). The charging instrument in this case alleged defendant "knowingly resisted the performance of [Officer Knapp] of an authorized act within his official capacity, being arrest of said defendant, *** in that said defendant refused to exit his car after being told he was under arrest and ordered out of the car by Officer Knapp." An information charging the offense of resisting a peace officer need not specify the particular physical acts forming the basis of the charge. *Lauer*, 273 Ill. App. 3d at 474, 653 N.E.2d at 33. However, in this case, the information references defendant's refusal to exit the vehicle, a physical act engaged in by defendant that supports defendant's conviction. Under these circumstances, the charging instrument's reference to defendant's refusal to exit the car cannot be said to have deprived him of the ability to prepare his defense or allow pleading a resulting conviction as a bar to future prosecution.

¶ 42

III. CONCLUSION

¶ 43 For the foregoing reasons, we conclude the State presented sufficient evidence to sustain defendant's conviction for resisting a peace officer. Because the State successfully defended a portion of the criminal judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal. See *People v. Smith*, 133 Ill. App. 3d 613, 620, 479 N.E.2d 328, 333 (1985) (citing *People v. Nicholls*, 71 Ill. 2d 166, 178, 374 N.E.2d 194, 199 (1978)).

¶ 44 Affirmed.