

No. 1-11-2883

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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. 11 CR 851
)	
GORDON GRANDBERRY,)	Honorable
)	Rosemary Grant-Higgins,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

- ¶1 *Held:* Defendant's convictions for attempting to disarm a peace officer and resisting a peace officer are affirmed where the evidence was sufficient to prove him guilty beyond a reasonable doubt; trial court's determination that the police officers testified credibly, will not be disturbed.
- ¶2 Following a bench trial, defendant Gordon Grandberry, was convicted of attempting to disarm a peace officer (Officer Joy McClain) and resisting and causing injury to a peace officer (Officer Mark Hernandez). The trial court sentenced defendant to concurrent terms of 13 years' imprisonment as a Class X offender. On appeal, defendant argues the State failed to prove him guilty beyond a reasonable doubt where the police testimony was not credible. We affirm.
- ¶3 Defendant was tried on three counts of aggravated battery to a peace officer, two counts of attempting to disarm a peace officer, and one count of resisting or obstructing a peace officer causing injury to that officer.

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¶ 4 At trial, Chicago police officer, Mark Hernandez, testified that on December 29, 2010, at approximately 11:40 a.m., he and his partner, Officer Joy McClain, were on patrol and driving in an unmarked grey police vehicle. Both officers wore bulletproof vests over plain clothes with their badges and name tags displayed. As the officers drove south on Wentworth Avenue, Officer Hernandez observed a green van parked on the side of the street. The officers knew that the Chicago Police Department had received numerous complaints of drugs being sold from that van. The officers drove past the van and observed someone seated in the driver's seat. Officer Hernandez parked in front of the van, and he and Officer McClain exited their vehicle and walked together to the driver side of the van to conduct a field interview. The occupant of the van watched the officers as they approached, moved his hands toward his waistband, and repeatedly looked up at them and back down to his waistband. Officer Hernandez identified defendant in court as the occupant of the van.

¶ 5 Officers Hernandez and McClain announced their office to defendant. Officer McClain opened the driver side door of the van. Officer Hernandez, for safety reasons, ordered defendant to step out of the van. Defendant exited the van and, simultaneously, pushed both officers forcefully in the chest with his hands. Defendant attempted to flee, but Officer Hernandez grabbed him around the waist taking him down to the ground, then got on top of him. Officer Hernandez reached for his handcuffs. Defendant then pushed the officer away and stood up. Officer McClain, meanwhile, made a "10-1" radio report that an officer required assistance. As the officers attempted to apprehend defendant, he waved to other people on the street and said: "Come help me, folks." Officer Hernandez explained that the word "folks" refers to members of the Gangster Disciples street gang. Defendant repeatedly pushed Officer Hernandez away from him. Officer McClain then went behind defendant, grabbed his belt, and pulled him to the side of the street, where they fell into a snowbank, with defendant on top of her.

¶ 6 Defendant attempted to get on his feet and break away from the officers. Officer Hernandez

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struck defendant's legs with his baton and repeatedly ordered defendant to "[s]top resisting." Officer Hernandez then observed defendant's right hand on Officer McClain's gun. Officer Hernandez dropped his baton, reached for his own gun, and felt defendant's hand on it. The officer looked down and observed defendant's left hand on his gun. Officer Hernandez placed both of his hands on his gun and stepped back. Officer McClain also placed both of her hands on her gun, at which time defendant jumped to his feet and fled. Officer Hernandez chased defendant, but then saw several men approaching Officer McClain, so he returned to assist her. Officer Hernandez then radioed a description of defendant and the direction in which he fled.

¶ 7 Officer Hernandez had three to four lacerations to his right middle finger which were bleeding, and a laceration to his left knee. He was taken by ambulance to an emergency room where he was treated and released. Officer Hernandez missed time from work due to his injury because he was unable to use his gun with his right hand. Officer Hernandez weighs 215 pounds. The officer testified defendant was approximately six feet tall and weighed approximately 220 pounds.

¶ 8 Chicago police officer Joy McClain testified substantially the same as Officer Hernandez regarding their observations of defendant as they approached the van, and their attempts to apprehend defendant. On that day, Officer McClain wore her badge and her gun and handcuffs were also visible on her duty belt. Officer McClain opened the driver side door of the van and stated to defendant: "Chicago police, step out of the car." When defendant exited the van, he stated: "I don't want any problems," then pushed both officers in the chest with his hands. Defendant attempted to flee, but Officer Hernandez grabbed him around the waist and pulled him down to the ground. Officer Hernandez lay on top of defendant, wrestled with him, and tried to handcuff him, while Officer McClain radioed for assistance. Defendant attempted to stand up and pushed Officer Hernandez. Officer Hernandez attempted to grab defendant, but defendant pushed him away and punched him. Officer McClain then grabbed the back of defendant's belt, pulled him to the side of the street, fell into a snowbank in a sitting position, and pulled defendant down onto her lap. Officer

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Hernandez struck defendant in the arms, hands and legs with his baton and ordered him to "[s]top resisting." Officer McClain felt a tugging on her right side and felt her duty belt move. She then saw defendant's right hand on the butt of her gun. Defendant repeatedly attempted to take Officer McClain's weapon from her. She told Officer Hernandez defendant was "going for [her] weapon" and to "shoot him." Officer McClain then released defendant's belt and placed her hands on top of defendant's hands, which were still on her gun. Defendant pulled his hands from under her hands and fled.

¶ 9 Chicago police detective Patricia Walsh testified that she and her partner, Detective Welch, were on duty in their vehicle near 72nd Street and Wentworth Avenue when they heard a "10-1" call for officer assistance which included a description of a black male wearing a fur jacket and tan pants. She then observed a man who matched the description of the offender get into the passenger seat of a blue vehicle parked directly in front of them. The blue vehicle took off and proceeded southbound on Vincennes Avenue and turned right onto 75th Street toward Princeton Avenue. Detective Walsh activated her emergency lights and attempted to curb the vehicle. When the blue vehicle pulled over, defendant got out and fled northbound on Princeton Avenue. The detectives pursued defendant on foot through a parking lot where defendant jumped over a spiked six-foot-tall wrought iron fence. Defendant's pants became caught on a spike, but he ripped himself free, fell over the fence, and fled. Detective Walsh was unable to pursue defendant further, so she radioed for assistance.

¶ 10 Chicago police officer Michael Keeney testified that he was on duty near the 7400 block of Princeton Avenue when he received a 10-1 call on the radio. He drove to the 7500 block of Princeton Avenue and conducted a yard-by-yard search for defendant with two other police officers. Officer Keeney discovered a man who matched the description of the offender hiding under a porch at 7421 S. Princeton Avenue. He identified defendant as the person found under the porch. Officer Keeney noted that defendant's pants leg was ripped. Defendant was then placed under arrest.

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¶ 11 Chicago police detective Ron Rempas testified that he was on duty at the Area One Detective Division and was assigned to defendant's case. He spoke with Officers Hernandez and McClain and defendant regarding the incident. Detective Rempas prepared a line-up which included defendant, and was present when Officers Hernandez and McClain viewed the line-up at 7:00 p.m. on the evening of the incident and identified defendant. Both Officer Hernandez and Officer McClain testified to identifying defendant as the offender in the line-up.

¶ 12 The next day, Detective Rempas and his partner, Detective Potter, took defendant into an interview room at about 3:30 p.m. and advised him of his *Miranda* rights. Defendant verbally confirmed that he understood his rights. Defendant informed Detective Rempas that he lived at 7132 S. Wentworth Avenue. He was sitting in his van after having a verbal altercation with his wife and, as a result of the argument, was angry. He then smoked some marijuana which made him feel extremely high. Shortly thereafter, defendant fell asleep in the van and awoke to Officers Hernandez and McClain at the driver side of the van. Defendant informed Detective Rempas that when he exited his vehicle, he shoved the officers away from him because he was still very high at that point and did not know what the officers wanted or what they were doing. After he shoved them, one of the officers grabbed defendant and he pushed the officer away. Defendant struggled with one of the officers to the ground. Defendant was then pulled back by one officer, and the other officer struck him in the legs with a baton. During the struggle, the male officer fell backward onto the other officer, and defendant got up and fled. Defendant said he jumped into a car driven by a man named "Dude," who drove them away from the scene. The police curbed the vehicle and defendant fled. As he jumped a fence, defendant's leg was caught on the fence, and he ripped his pants. Defendant then hid under a nearby porch where the police arrested him. He never requested to go to a hospital.

¶ 13 Following this testimony, the State rested. The trial court denied defendant's motion for directed findings.

¶ 14 In defendant's case, Ernestine Henry testified that she knew defendant from the

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neighborhood, but was not friends with him. On December 29, 2010, Ms. Henry was walking to her car from a store on the corner of 72nd Street—the same side of the street where the van was parked. Ms. Henry was approximately 10 feet away from the van when she observed a woman, who wore jeans and a hoodie, exit a "regular car" and "snatch" defendant out of his vehicle. Ms. Henry stated the woman was not wearing a badge or a vest. Once defendant was out of his vehicle, a man approached and placed defendant in a choke hold. Ms. Henry did not witness any more of the incident because she got into her car and drove home.

¶ 15 On cross-examination, Ms. Henry indicated that she did not believe the two people were police officers. She did not call 911, and she did not attempt to get help. Ms. Henry also said she is not a friend of either defendant or his wife. She did see defendant's wife in a store approximately three weeks before defendant's trial, and they exchanged telephone numbers. Approximately two weeks later, Ms. Henry learned the date of the trial from a phone conversation with defendant's wife.

¶ 16 Defendant's wife, Alonda Grandberry, testified that on the morning of December 29, 2010, she was inside the house preparing for work while defendant was outside warming up the van. When she went outside, Ms. Grandberry observed a gray car pull in front of defendant's van. A woman exited the gray car, approached the van and snatched defendant out of it. Ms. Grandberry indicated that defendant "snatched back."

¶ 17 Ms. Grandberry further testified that a male then approached defendant and grabbed him around the neck. A "tussle" ensued between defendant and the male. Ms. Grandberry testified that "the off- - -, the lady was pulling [defendant] by the back of his jacket." Ms. Grandberry stated that the woman then fell, but she could not see whether the woman was on top of defendant because of the snow. She indicated that the male used a stick "they" carry and began to strike defendant with it. Ms. Grandberry claimed she did not see defendant touch the woman's gun. She stated that she observed the incident from the door of her apartment building which was less than 50 feet away, and directly across the street from where defendant's van was parked.

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¶ 18 On cross-examination, Ms. Grandberry indicated that she knew the woman and the man were the police as soon as defendant was pulled from his van and that she believed they were simply harassing defendant. Ms. Grandberry spoke with Ms. Henry for the first time by phone approximately one week before the trial began.

¶ 19 Defendant testified on his own behalf and admitted that he had 10 prior convictions. On December 29, 2010, he was sitting in his van waiting to drive his wife to work when a gray car parked in front of the van. A male and female got out of the grey car and approached the van. Defendant testified he did not immediately realize the persons approaching him were police officers. The female "snatched my door open, grabbed me out [of] the car and told me I was under arrest." Officer McClain pulled out handcuffs and defendant tried to break away.

¶ 20 Defendant testified that the male officer approached him and grabbed him by the neck while defendant struggled to get away. The female officer then grabbed defendant from behind while the male officer continued to keep his hold on defendant. Defendant continued his attempts to flee. The female officer then dragged defendant by his jacket to the other side of Wentworth Avenue and, in the process, she fell backward, pulling defendant down to the ground and on top of her. Defendant stated that at this point, he did know they were police officers, and noted they were both carrying firearms. The male officer was striking defendant with his "billy club" while defendant attempted to stop the blows. Defendant claimed he did not go for the officers' weapons, not even inadvertently. Defendant was able to eventually get away and he fled toward 73rd Street.

¶ 21 When defendant reached 73rd Street, he recognized someone he knew as Mark sitting in a car. Defendant told Mark the police were trying to kill him, then he got into the passenger seat of Mark's vehicle. Mark began to drive away. At 74th Street and Wentworth Avenue, a police car with its lights and siren activated pulled over Mark's vehicle. Defendant exited the vehicle and fled. Defendant stated that while he was running away, the police shot at him twice. Defendant ran through a parking lot and climbed a fence. Defendant claims that while he was climbing over the

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fence, his leg was grazed by a bullet and he was then propelled over the fence. Defendant ripped his pants on the fence and limped to an area where he thought he would be safe. Approximately 15 minutes later, the police found him hiding under the stairs in a backyard on Princeton Avenue, and arrested him. Defendant was hiding because he believed the police were trying to kill him. Defendant denied resisting the police, but acknowledged he had pulled away from them to avoid being handcuffed. Defendant believed he was in danger from the police officers who were the aggressors. Defendant stated that while he was at Cermak Hospital in the jail, he informed the attendants that a bullet had grazed his leg. However, his medical records from Cermak Hospital did not include a report of a gunshot wound.

¶ 22 On cross examination, defendant testified that he realized when Officer McClain took out her handcuffs they were police officers, but he did not want to get arrested.

¶ 23 At the conclusion of trial, the trial court stated it had listened to the testimony and assessed the witnesses' credibility. The trial court found the police officers' testimony "exceedingly credible." The trial court concluded that Ernestine Henry did not have "any real relevant information," and was "not really a true witness" to the incident. The trial court noted inconsistencies during Ms. Grandberry's testimony as she referred to the woman who pulled defendant from the van as "off- - ." The trial court believed Ms. Grandberry was about to say "officer" and that she knew they were the police. She found that there was a reason for the officers to investigate the van and to ask defendant to exit the van. The trial court further found defendant was aware that Officers McClain and Hernandez were police officers from "the very minute" he was pulled from his van. The trial court also noted that defendant admitted to his attempts to break free from the officers, thereby resisting arrest. The trial court stated defendant had no legal basis nor right to resist the officers. Further, the trial court found Officer Hernandez had been injured in his attempts to arrest defendant. The trial court stated Officer McClain's testimony—that defendant had reached for her gun—was "exceedingly believable and credible."

¶ 24 Based on these findings, the trial court found defendant guilty of resisting and injuring Officer Hernandez and attempting to disarm Officer McClain.

¶ 25 The trial court found defendant not guilty of attempting to disarm Officer Hernandez, and explained that although Officer Hernandez's testimony was "exceedingly credible," it did not make sense that defendant's hands were on both of the officers' guns at the same time and, possibly, that some contact with Officer Hernandez's gun had occurred during the struggle. The trial court also found defendant not guilty of the aggravated battery charges, but gave no further explanation. The trial court subsequently sentenced defendant to concurrent terms of 13 years' imprisonment.

¶ 26 On appeal, defendant contends the State failed to prove him guilty beyond a reasonable doubt because Officer McClain's testimony was not credible and should be "totally disregarded." Defendant claims the officer's testimony was contradicted by Ernestine Henry's testimony that Officer McClain did not identify herself when she pulled defendant out of the van, and that Ms. Henry did not observe defendant forcibly push the officers when he exited his van. Defendant further claims Officer McClain's testimony was contradicted by Ms. Grandberry's testimony that she did not observe defendant place his hands on the officer's gun. Defendant argues that because the trial court found defendant not guilty of the aggravated battery charges, it may be presumed it did not find Officer McClain's testimony believable, and it may be reasonably inferred that Officer McClain "lied about the resisting arrest" offense.

¶ 27 As a threshold matter, we find that defendant in his brief twice incorrectly asserts that Officer Hernandez did not testify at trial. Defendant argues that "[t]he one witness who could have corroborated [Officer McClain's testimony], Officer Hernandez, did not testify" and that "[Officer] Hernandez did not testify to corroborate [Officer McClain's testimony]." As stated above, it is clear from the transcripts that along with Officer McClain, Officer Hernandez testified as one of the State's two primary witnesses. Officer Hernandez was the first witness to testify, and his testimony spans 52 pages of the trial transcripts. Furthermore, defendant's trial counsel had cross-examined Officer

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Hernandez.

¶ 28 Turning to the merits of defendant's argument, when defendant argues the evidence is insufficient to sustain his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. "Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State." *Baskerville*, 2012 IL 111056, ¶ 31. This standard applies whether the evidence is direct or circumstantial. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). A criminal conviction will not be reversed based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 29 In a bench trial, the trial court as the trier of fact is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences therefrom. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). In weighing the evidence, the fact finder is not required to disregard the inferences that naturally flow from that evidence, nor must it search for any possible explanation consistent with innocence and raise it to the level of reasonable doubt. *Jackson*, 232 Ill. 2d at 281. This court is prohibited from substituting its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *Id.* at 280-81. Defendant's conviction will not be reversed on review simply because he claims a witness was not credible or the evidence was contradictory. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 30 To prove defendant guilty of attempting to disarm a peace officer, the State is required to show defendant attempted to take a weapon from a person he knew was a peace officer, without that officer's consent, while the officer was performing her official duties. 720 ILCS 5/31-1(a)(b) (West 2009). To prove attempt, the State must establish defendant intended to commit a specific offense, and performed an act that constituted a substantial step toward committing that offense. 720 ILCS

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5/8-4(a) (West 2010). To prove defendant guilty of resisting a peace officer and causing an injury, the State must show defendant knowingly resisted a peace officer, the officer was performing an authorized act in his official capacity, defendant knew he was a peace officer, and defendant's act of resistance was the proximate cause of the officer's injury. 720 ILCS 5/31-1(a-7) (West 2009).

¶ 31 Here, we find the evidence was sufficient for the trial court to find defendant guilty of attempting to disarm Officer McClain, and resisting Officer Hernandez and causing his injuries. Although Officers Hernandez and McClain were in an unmarked police car and wore plain clothes, they both wore bulletproof vests over their clothes with their police badges and name tags displayed on the front of their vests. Officer McClain further testified that her gun and handcuffs were visible on her duty belt. The officers approached the van because they had knowledge of complaints that the van was involved in drug dealings. They announced their office and, for safety reasons, asked defendant to exit the van. After exiting the van, defendant forcefully, pushed both officers, giving the officers' reason for his arrest. Moreover, defendant testified that he did not initially know they were police officers, however he later acknowledged that when he observed Officer McClain's handcuffs as she attempted to arrest him, he knew they were the police. Both officers testified they saw defendant's right hand on Officer McClain's gun. Officer McClain testified defendant repeatedly yanked and pulled up on her gun. This testimony sufficiently establishes defendant attempted to disarm Officer McClain without her permission while she was performing her official duties.

¶ 32 In addition, both officers, defendant, and defendant's wife testified to the lengthy struggle between the officers and defendant. Defendant acknowledged he knew he was being arrested and further testified that he repeatedly attempted to break free from the officers, and eventually did so. Defendant fled from the scene and continued to be pursued by other officers. Officer Hernandez testified that during his struggles with defendant, he was pushed and thrown to the ground and received lacerations to his finger and his knee which required medical treatment. We find that the testimony supports the trial court's findings that defendant resisted numerous attempts by Officer

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Hernandez to take defendant into custody, defendant had no right to resist the officer, and Officer Hernandez was injured while attempting to arrest defendant. Consequently, the State proved defendant guilty beyond a reasonable doubt of both resisting arrest which resulted in injury to Officer Hernandez and attempting to disarm Officer McClain.

¶ 33 As the trier of fact, it was the trial court's responsibility to determine the credibility of all witnesses—including Officer McClain—and to resolve any conflicts in the evidence. Here, the trial court expressly found that the testimony of Officers McClain and Hernandez was "exceedingly credible." We find no merit in defendant's argument that this finding was unreasonable in light of the testimony of Ernestine Henry and Alonda Grandberry. The trial court specifically stated Ms. Henry did not have "any real relevant information," and the court did not believe she was "a true witness" to the incident. The court further found Officer McClain's testimony, that defendant reached for her gun, was "exceedingly believable and credible." Ms. Grandberry's testimony, that she did not see defendant put his hand on the officer's gun, does not undermine Officer McClain's and Officer Hernandez's testimony, that defendant's hands were on the officer's gun. Moreover, and contrary to defendant's erroneous assertion, Officer Hernandez did testify, and his testimony completely corroborated the testimony of Officer McClain. The trial court was in the superior position to assess the credibility of the witnesses, observe their demeanor, weigh their testimony, and resolve any conflicts therein, and we find no reason to disturb its findings. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 34 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 35 Affirmed.