

No. 1-12-2721

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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 MC 1206569
)	
PATRICIA NEACE,)	Honorable
)	James Ryan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice Gordon and Justice Taylor concurred in the judgment.

O R D E R

- ¶ 1 **Held:** Defendant was proven guilty, beyond a reasonable doubt, of resisting a peace officer when the evidence at trial established that when informed that she was under arrest defendant pulled away and dragged an officer into her apartment.
- ¶ 2 After a bench trial, defendant Patricia Neace was found guilty of resisting a peace officer and sentenced to 12 months of conditional discharge. On appeal, defendant contends that she was not proven guilty beyond a reasonable doubt because the State failed to establish that she

knowingly resisted a peace officer when she merely reacted "reflexively" to the pain caused by the officers. We affirm.

¶ 3 At trial, officer Huh testified that he and his partner officer Wallscetti-Perez knocked on defendant's apartment door after responding to a call regarding an assault. When defendant answered the door, the officers stated that she was being placed under arrest. When defendant said "no," Huh grabbed her right hand. Defendant responded by pulling away. This caused Huh to be pulled into the apartment. Defendant continued to back up and pull away using her body weight. Ultimately, it took 10-15 seconds, an "emergency takedown," and Wallscetti-Perez's assistance to gain control of defendant. While this was happening, defendant's son was standing a few feet away yelling stop and telling defendant to listen to the officers. During cross-examination, Huh acknowledged that he did not ask defendant to put her hands out so that she could be taken into custody. He denied that defendant stated that she was disabled or that he was hurting her during the encounter.

¶ 4 Officer Wallscetti-Perez testified that when defendant opened the door and stepped out, he advised her that she was under arrest. At that point defendant "started motioning" as though she was going to reenter her apartment, so Huh grabbed her right arm. Defendant responded by pulling away and dragging Huh inside. Because defendant continued to pull away, Huh performed an emergency takedown. During this time, Wallscetti-Perez yelled at defendant to stop resisting and held her arm so that Huh could place her in handcuffs. Although he heard defendant grunt, he could not understand the noises she was making.

¶ 5 Lieutenant Patrick Conroy testified that he spoke to defendant after a Tactical Response Report (TRR) had been filed. A TRR is filed whenever an officer is a victim of a battery or

when an officer uses "force to take someone into custody." During this conversation, defendant stated that when the officers told her she was under arrest she then attempted to walk away.

¶ 6 Defendant testified that as she opened the door she stepped back "a little bit," because her son came into the area. She turned to tell him to go back to a bedroom. When she turned back around, Huh was pointing a taser at her. Defendant asked why Huh would "tase" her as she is disabled. Huh put the taser away and told her to hang up the "f*** phone" because she was illegally recording the officers. Huh then grabbed and began twisting her wrist. Defendant was in pain because her spine did not move in "this direction." She tried to accept the pain and follow her son's instructions to lie on the floor. At the same time the officers "jerked" her into handcuffs. The officers then stood her up, told her "some inappropriate things" and took her outside. Defendant asserted that she told the officers that she was unable to move her hands and body in the direction they pushed her.

¶ 7 Amir Chaib, defendant's son, testified that he was 10 years old at the time of this incident. He heard defendant say stop and that she was disabled. He also saw the officers grab defendant's right arm, move it up and down, then place both of defendant's arms behind her back and push her to the floor. Amir asked defendant if she was "okay" because she was crying. He denied telling defendant to stop resisting, but admitted during cross-examination that he told defendant to stop, lie down, and let the officers arrest her.

¶ 8 In finding defendant guilty of resisting a peace officer, the trial court stated that Amir's testimony during direct examination appeared rehearsed and that his testimony during cross-examination corroborated the credible testimony of officers Huh and Wallscetti-Perez. The court also stated that it found defendant's testimony to be incredible. Ultimately, the court sentenced defendant to 12 months of conditional discharge.

¶ 9 On appeal, defendant contends that the evidence at trial failed to establish beyond a reasonable doubt that she voluntarily resisted a peace officer when she merely reacted "reflexively" to the pain caused by the officers' actions. Specifically, defendant contends that she told the officers she was disabled and in pain and that the fact that the encounter only took 10-15 seconds supports her contention that her actions were a reflex rather than voluntary actions.¹

¶ 10 In assessing the sufficiency of the evidence, 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. A criminal conviction will not be reversed based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 11 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

¹ Although defendant contends that Huh testified that that defendant was wearing a sling when she answered the door, a careful review of the record reveals the following exchange between Huh and the Assistant State's Attorney at trial:

"Q. When you knocked on the door, did anyone answer?"

A. Yes.

Q. Who answered the door?

A. The defendant wearing the white shirt and the sling.

Mr. Serio: Your Honor, may the record reflect an in-court identification of the defendant?

The Court: It will."

Other than that brief reference to a sling during the in-court identification, no witness testified that defendant was wearing a sling at the time of the incident. Notably, neither the defendant nor her son testified to that fact. On the contrary, while the police officers testified that they struggled with defendant's arms, there was no mention of a sling. Taken in context, it is probable that Huh was referring to defendant's appearance in court when he mentioned a sling. This is buttressed by the fact that the trial court noted for the record that when the defendant was sworn to tell the truth at the time of her testimony, she was unable to raise her right hand as it was in a sling. However, Huh's testimony with regard to the sling must be considered to be ambiguous, especially in light of the fact that the defendant testified that she repeatedly told the police officers that she was disabled. In light of this ambiguity, we ascribe little or no weight to the testimony concerning the sling as well as the argument in that regard.

drawing reasonable inferences from the evidence presented at trial. *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 a defendant's innocence and raise it to the level of reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 12 To prove a defendant guilty of resisting a peace officer, the State must show that she knowingly resisted a peace officer, the officer was performing an authorized act in his official capacity, and the defendant knew he was a peace officer. 720 ILCS 5/31-1(a) (West 2010).

¶ 13 When assessing a sufficiency of the evidence claim on appeal, this court does not retry the defendant or substitute its judgment for that of the trier of fact as to the issues of witness credibility and the weight to be given to each witness's testimony (see *People v. Ross*, 229 Ill. 2d 255, 272 (2008)), yet this is exactly what defendant seeks. She essentially asks this court to reweigh the evidence against her, as her contentions on appeal focus on why the trial court was wrong to believe the testimony of the police officers rather than that of defendant and her son. We decline defendant's request.

¶ 14 Here, viewing the evidence in the light most favorable to the State, as we must, the evidence sufficiently established that defendant resisted a peace officer when defendant's response to being told that she was under arrest was to say "no," move backward into her apartment and pull away from Huh's hold with her body weight. The officers testified it took their combined efforts to place defendant in handcuffs, and Conroy testified that defendant later admitted that she tried to walk away after being told she was under arrest. This court cannot say that no rational trier of fact could have found defendant guilty when the officers' testimony

established that defendant pulled away as they attempted to take her into custody. *Baskerville*, 2012 IL 111056, ¶ 31.

¶ 15 Defendant, on the other hand, contends that her testimony established that her actions were involuntary because they were merely a reflex to the pain caused by the officers during a 10-15 second time frame and she told the officers that she was disabled and in pain. However, Huh denied that defendant informed him that she was disabled or that she was in pain. Here, it was for the trial court, as the trier of fact, to resolve any conflicts in the evidence and to assess the credibility of the witnesses. See *Siguenza-Brito*, 235 Ill. 2d at 228. In the case at bar, the trial court found defendant incredible and officers Huh and Wallscetti-Perez to be credible, as evidenced by its verdict, this court will not substitute our judgment for that of the trial court on this issue. See *Siguenza-Brito*, 235 Ill. 2d at 228 (it is not the function of the reviewing court to retry the defendant).

¶ 16 We are unpersuaded by defendant's reliance on *City of Pekin v. Ross*, 81 Ill. App. 3d 127, 129 (1980), as in that case the defendant testified that he tried to move his arms because of the severe pain caused by the method the police used to handcuff him. On appeal, the court reversed the defendant's conviction for resisting arrest because the "only struggling" the defendant did was to pull his arms down and that was not enough to constitute resistance. *Ross*, 81 Ill. App. 3d at 130. In the case at bar, in contrast, the evidence at trial established that defendant pulled away when Huh tried to take her into custody and she later admitted that she tried to walk away from the officers.

¶ 17 Ultimately, this court reverses a defendant's conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to her guilt (*Givens*, 237 Ill. 2d at 334); this is not one of those cases. Accordingly, we affirm defendant's conviction.

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¶ 18 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 19 Affirmed.