FOURTH DIVISION
September 3, 2015

1-13-3712

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. 13 MC1 188262
	)	
LESLIE GLOVER,	)	Honorable
	)	Sandra Ramos,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court of Cook County's judgment convicting Defendant of resisting or obstructing a peace officer is reversed. The evidence at trial was not sufficient to prove Defendant guilty beyond a reasonable doubt where the evidence failed to prove Defendant failed to comply with any order, any alleged noncompliance was more than mere argument with the officers' authority, or that Defendant's acts did impede, hinder, interrupt, prevent, or delay performance of the officers' duties.

¶ 2 This incident began when two Chicago Police Department officers who were part of a special saturation team for "busy" (presumably high crime) areas stopped their patrol to investigate an occupied vehicle stopped in the middle of the street. The officers circled the block and pulled up directly behind the vehicle, which then pulled down the street and double parked. An officer approached the vehicle and requested a driver's license. Defendant, Leslie Glover, could not locate her driver's license quickly enough for the officer and, as will be explained in greater detail below, was ultimately charged with resisting or obstructing a peace officer.

¶ 3 Following a bench trial, the circuit court of Cook County found Defendant guilty and sentenced her to one year of conditional discharge. Defendant appeals on the grounds (1) the State failed to prove her guilty beyond a reasonable doubt and (2) the trial court erred in denying her motion for a new trial based on ineffective assistance of counsel at trial.

¶ 4 For the following reasons, we reverse Defendant's conviction.

¶ 5 BACKGROUND

¶ 6 The State charged Defendant, Leslie Glover, with one count of resisting or obstructing a peace officer, in violation of section 31-1(a) of the Criminal Code of 2012 (Code) (720 ILCS 5/31-1(a) (West 2012)), for allegedly knowingly resisting the performance of an authorized act "of a person known to be a peace officer within the officer's official capacity and engagement [*sic*] in the execution of his/her official duties" in that she (a) did not follow verbal direction, (b) stiffened her arm, and (c) refused to sit in a squad car after being placed in custody, all "in an attempt to defeat an arrest" for a violation of the Code. The circumstances that led to

Defendant's arrest for resisting or obstructing a peace officer started because Defendant was double-parked.

¶ 7 Police officer Daniel Dowling testified at Defendant's trial that at approximately seven p.m. on January 28, 2013, he observed a double-parked vehicle at 6621 South Oakley in Chicago. He testified he elected to perform a traffic stop. He exited his vehicle and spoke to the driver. Officer Dowling identified Defendant as the driver and testified that as he was speaking to her "she was getting increasingly agitated." Officer Dowling testified that Defendant was looking through two different purses for her driver's license. She told him she had a valid license but may not have the license with her. Officer Dowling testified, "I told her to exit the vehicle, to wit [*sic*], she refused." Officer Dowling continued: "I ordered her several more times to get out the vehicle [*sic*] to which she continued to refuse. So I opened *** up her driver's door and placed a handcuff on her left wrist."

¶ 8 Dowling testified that *after* placing the handcuff on Defendant's left wrist, Defendant "*exited the vehicle* on her own, and was complying." (Emphasis added.) Officer Dowling testified he informed Defendant he was placing her in custody for driving without a driver's license and that her vehicle was "being placed into custody for a sound-restrictive device." The State asked Officer Dowling what happened *after* Defendant exited the vehicle. He responded: "*I placed the handcuffs on her wrist*, and she fell forward. She stiffened her arms and began to flail." (Emphasis added.) Defense counsel asked Officer Dowling how Defendant stiffened her arms and he replied: "She jerked."

¶ 9 Officer Dowling testified that his partner, Officer Warren, was "already coming around the vehicle to assist" when Defendant began to flail. Officer Dowling testified that

Officer Warren "grabbed her other arm, and both of us, together, put her arms behind her back and got her handcuffed." As the officers were handcuffing Defendant, Officer Dowling testified that Defendant was "screaming and yelling and was trying to get her family to come out while we were actually right next to her." Officer Dowling testified that he escorted Defendant to his vehicle where, he said, Defendant refused to get into the vehicle. Specifically, Officer Dowling testified, in total, as follows:

> "Q. Now, what did you do after you and your partner finally got the handcuffs on her?
>
> A. She was escorted to the vehicle, where she refused to get into the vehicle.
>
> Q. Why did you attempt to place her in the rear seat of the vehicle?
>
> A. My partner was behind me. He was speaking to the family. So I wanted to get her into the vehicle.
>
> Q. Did she get into the vehicle?
>
> A. No. I had to force her into the vehicle."

Officer Dowling testified that he had to force Defendant into the vehicle and that he did so with "a push and a shove to her upper chest area." Officer Dowling testified that the time from putting handcuffs on Defendant to placing her in his police car was 45 seconds.

¶ 10 On cross-examination Officer Dowling testified that Defendant was "a little bit nervous" and could not find her license right away. When the officers returned to the police

station, they discovered Defendant's license was actually in one of the purses in her possession.

¶ 11 Officer Warren testified that he observed Defendant refuse verbal directions to exit the vehicle and observed Officer Dowling open the driver's door and place handcuffs on Defendant's left wrist. Officer Warren testified that Officer Dowling attempted to pull Defendant out of the vehicle *with the handcuff on the left wrist*, and as Defendant was coming out of the vehicle, "she was screaming and pulling away from Officer Dowling." Officer Warren testified that at that time, he walked around the rear of the vehicle and came up to Defendant's right. Officer Warren testified that Defendant did not get into their police vehicle willingly and that Officer Dowling "had to assist her in to get her into the car."

¶ 12 On cross-examination Officer Warren testified that *after* Officer Dowling handcuffed Defendant's left wrist she stepped out of the vehicle on her own. Defendant's right arm was free and "placed out" so he grabbed her right wrist and placed her right arm behind her back to apply the other handcuff on her right wrist. Officer Warren testified that Defendant stiffened her right arm for a "second or two." After the officers had both handcuffs on Defendant they escorted her to their police vehicle where Officer Dowling placed her inside.

¶ 13 Defendant testified she was having difficulty seeing because of the officers' lights when she was asked for her driver's license. Defendant testified that when the officer ordered her out of the vehicle by using an expletive, she responded by asking why she had to get out of the car and what she had done. She testified the officer responded with a question and put his finger in her window. Defendant testified she lowered her window all the way down, the officer grabbed her wrist, and he placed a handcuff on her left wrist. She testified the officer

pulled her out of her vehicle. Defendant testified Officer Dowling placed handcuffs on both her left and right wrists. She denied ever flailing her arms. She denied stiffening her right arm so that the officer could not handcuff her. Defendant admitted calling out to her family and requesting a supervisor. She denied resisting being placed into the police officers' vehicle.

¶ 14 On cross-examination of Defendant, the State only asked if Officer Dowling asked her to step out of the vehicle. Defendant responded Officer Dowling ordered her out of the vehicle with an expletive.

¶ 15 Following arguments the trial court found that the State had met its burden of proof and found Defendant guilty. Defense counsel asked the court to clarify its order. The court responded that the State had proved three acts that would independently satisfy its burden: (1) failing to follow verbal direction, (2) stiffening one arm, and (3) refusing to sit in the police vehicle after being placed into custody. The court stated:

> "I said that any one of those three acts would have done it, the stiffened arm, whether it's one or both; those are three I said that were articulated and were substantiated and corroborated by the officers, even if it's one second that you cite with the arm, even if its' twice that you have to make the verbal command."

¶ 16 Defendant filed a posttrial motion for a new trial on the grounds the State failed to prove every element of the offense beyond a reasonable doubt and she received ineffective assistance of counsel. The trial court denied Defendant's motion. This appeal followed.

¶ 17 ANALYSIS

¶ 18 Defendant challenges the sufficiency of the evidence to prove her guilty beyond a reasonable doubt.

¶ 19 1. The Standard of Review

¶ 20 "The State has the burden of proving each element of a criminal offense beyond a reasonable doubt." *People v. Brown*, 2015 IL App (1st) 131873, ¶ 12 (citing *People v. Siguenza–Brito*, 235 Ill. 2d 213, 224 (2009)). When a defendant challenges her criminal conviction on the grounds the evidence is insufficient to prove each element of the offense beyond a reasonable doubt, this court will construe all of the evidence in the light most favorable to the guilty verdict and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Brown*, 2015 IL App (1st) 131873, ¶ 12. The elements of the offense of resisting or obstructing a peace officer in violation of section 31-1 of the Code are knowingly resisting or obstructing a peace officer in the performance of any authorized act within the peace officer's official capacity. 720 ILCS 5/31-1(a) (West 2012).

¶ 21 The weight to be given to the testimony of the witnesses, their credibility, and the reasonable inferences to be drawn from the evidence, are all matters to be determined by the trier of fact. *Brown*, 2015 IL App (1st) 131873, ¶ 12. "Although these determinations by the trier of fact are entitled to deference, they are not conclusive." *People v. Brown*, 2013 IL 114196, ¶ 48. "We will not reverse a criminal conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant's guilt." *Brown*, 2015 IL App (1st) 131873, ¶ 12 (citing *People v. Jackson*, 232 Ill. 2d 246, 281 (2009)).

¶ 22 2. Elements of the Offense of Resisting or Obstructing a Peace Officer

¶ 23 Our supreme court has held that the "legislative focus of section 31-1(a) is on the tendency of the conduct to interpose an obstacle that *impedes or hinders* the officer in the performance of his authorized duties." (Emphasis added.) *People v. Baskerville*, 2012 IL 111056, ¶ 23. " 'Hinder' means to make slow or difficult the course or progress of [citation], and 'impede' means to interfere with or get in the way of the progress of [citation]." (Internal quotation marks omitted.) *Baskerville*, 2012 IL 111056, ¶ 19. While "section 31-1(a) has most often been applied in connection with a physical act" (*id.* ¶ 21), our supreme court held that a physical act is not an essential element of the offense nor is a physical act the exclusive means of committing the offense (*id.* ¶ 23). It is that conduct "falling between mere argument and a physical act" (*id.* ¶ 22) that might also impede or hinder the officer in the performance of his or her authorized duties. *Id.* ¶¶ 22, 23. Our supreme court has also held that the statute does not "proscribe mere argument with a policeman about the validity of an arrest or other police action." *Baskerville*, 2012 IL 111056, ¶ 20 (quoting *People v. Raby*, 40 Ill. 2d 392, 399 (1968)); *People v. Bohannon*, 403 Ill. App. 3d 1074, 1077 (2010) ("*Raby* and its progeny reveal a concern that the phrase 'resists or obstructs' is not defined so broadly that it places citizens in jeopardy of an arrest for mere verbal disagreement.")).

¶ 24 In *People v. McCoy*, 378 Ill. App. 3d 954, 967 (2008), the court noted that "[a]lthough most courts agree that active physical resistance (wrestling or struggling with a police officer) is a violation of the statute, some courts have seemed to have made a distinction based upon the amount of active physical resistance asserted by the defendant and have found that where the defendant initially resists but then eventually complies with police orders, the statute has not been violated." *McCoy*, 378 Ill. App. 3d at 967. In support of that observation, the *McCoy*

court cited *People v. Flannigan*, 131 Ill. App. 2d 1059 (1971). In *Flannigan*, a state police officer stopped his patrol car behind the defendant's vehicle after a report of reckless driving. *Flannigan*, 131 Ill. App. 2d at 1060. The officer approached the defendant's vehicle, told the defendant he was under arrest, and told the defendant to come with him. *Id.* The defendant asked what the charge was and the officer responded. *Id.* The defendant then asked who was going to prefer the charges and the officer responded that the officer would. *Id.* The defendant still refused to comply. The officer attempted to take the defendant's keys and the defendant removed them from the ignition. The defendant replaced the keys and the officer was able to take them. The officer eventually pulled the defendant from the car. *Id.*

¶ 25 On appeal, the court found that while the defendant's conduct was "not the paragon of cooperation," that conduct "was not 'withstanding the force or effect of' or the 'exertion of oneself to counteract or defeat' [the officer] in the exercise of his authorized duty." *Id.* at 1063. The *Flannigan* court found the defendant's conduct no more than "an insubstantial display of antagonism or belligerence" that did not constitute the offense of resisting a police officer. *Id.*

¶ 26 We note that the courts in both *McCoy* and *People v. Synnott*, 349 Ill. App. 3d 223 (2004), were critical of the holding in *Flannigan*. *McCoy*, 378 Ill. App. 3d at 964; *Synnott*, 349 Ill. App. 3d at 228. In *Synnott*, the court found that "any behavior that actually threatens an officer's safety or even places an officer in fear for his or her safety is a significant impediment to the officer's performance of his or her duties." *Synnott*, 349 Ill. App. 3d at 228. Regardless of disagreement with *Flannigan*, there appears to be no dispute among the courts that the conduct at issue under section 31-1 must have impeded the officer's attempt to execute an

authorized act. *McCoy*, 378 Ill. App. 3d at 964. See also *Baskerville*, 2012 IL 111056, ¶ 35 ("the false statement only has legal significance if it was made in relation to an authorized act within the officer's official capacity and if the false information *actually impeded* an act the officer was authorized to perform" (emphasis added)).

¶ 27 The duration of the defendant's conduct and its impact on the officer's execution of the authorized act are relevant inquiries to determine whether the evidence was sufficient to sustain a conviction for a violation of section 31-1. See *People v. Shenault*, 2014 IL App (2d) 130211, ¶ 22 ("Neither *Baskerville* nor [*People v. Taylor*, 2012 IL App (2d) 110222] categorically held that the degree of obstruction is measured *only* by the amount of time necessary for a peace officer to overcome the defendant's conduct."). In *Taylor*, the State charged the defendant with obstruction of justice in violation of section 31-4 of the Code (720 ILCS 5/31-4(a) (West 2008)) and resisting a peace officer in violation of section 31-1 of the Code. Although the jury acquitted the defendant in *Taylor* of resisting a peace officer in violation of section 31-1 of the Code (*id.* ¶ 6), the *Taylor* court discussed *Baskerville*, which it found involved an offense similar to the section 31-4 offense at issue in *Taylor*. *Id.* ¶ 15.

¶ 28 Applying *Baskerville* to the facts before it, the *Taylor* court, relying in part on the brevity of the encounter, held that the defendant's actions did not actually interfere with or materially impede the police investigation. *Id.* ¶ 17. A factor that will overcome the brevity of the alleged act of resistance is if the defendant's conduct forces the police officer to place his or her own safety at risk. *Shenault*, 2014 IL App (2d) 130211, ¶ 22 ("There was sufficient evidence for the jury to conclude that [the] defendant repeatedly refused [the officer's]

direction to exit her vehicle and that, as a result, [the officer] was forced to place his own safety at risk. Pursuant to *Synnott*, such conduct qualifies as obstruction.").

¶ 29 With these legal principles in mind, we turn to an application of the law to the facts of this case.

¶ 30 3. The Case Against Defendant

¶ 31 Under section 6-112 of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/6-112 (West 2012)), every licensed driver is required to have his or her driver's license in their immediate possession at all times when operating a motor vehicle and to display such license "if it is in his possession upon demand made *** [by a] police officer ***." 625 ILCS 5/6-112 (West 2012). This court has held that "[a] police officer may arrest a driver who fails to comply with this section of the [Vehicle] Code." *People v. Mendez*, 322 Ill. App. 3d 103, 109-10 (2001). The State charged Defendant with committing three distinct physical acts in an attempt to defeat arrest: (a) failing to follow a verbal direction, (b) stiffening her arm, and (c) refusing to sit in the officer's squad car after being placed into custody. The trial court found that the State proved Defendant committed all three acts and that any of the acts on its own was sufficient to establish Defendant's guilt.

¶ 32 We agree that the evidence is sufficient to prove that Defendant knew Dowling and Warren were police officers. We also agree for purposes of this appeal that the officers were engaged in the performance of an authorized act within their official capacity. However, construing the evidence in the light most favorable to the prosecution, we hold that the evidence is so unsatisfactory that it fails to prove beyond a reasonable doubt that Defendant's conduct impeded or hindered the officers' performance of an authorized act within the

meaning of section 31-1(a). Accordingly, Defendant's conviction is reversed. Therefore, we have no need to reach Defendant's ineffective assistance of counsel argument.

¶ 33 a. Failing to Follow Verbal Direction

¶ 34 The verbal direction at issue in this case was to exit the vehicle. Based on the evidence in the record and under the specific circumstances of this case, we disagree with the trial court's finding that the State met its burden of proof.

¶ 35 Officer Dowling testified that Defendant was looking for her driver's license when he told her to exit the vehicle. The officers later determined that Defendant did in fact have her license in her possession and both agreed she was attempting to comply with section 6-112 and produce her license when Officer Dowling ordered Defendant to exit her vehicle. Officer Dowling testified that Defendant was looking through two purses for her license and related to him "that she *may* not have it, and she was, indeed valid" (emphasis added) when he told her to exit the vehicle. We note that although the officers' testified Defendant became emotionally and verbally agitated neither testified she ever stopped looking for her license. Defendant testified that when Officer Dowling ordered her to get out of her car she asked him why she had to exit the car and what she had done. Officer Dowling testified he ordered Defendant to get out of her vehicle "multiple times" and she refused. Officer Dowling did not testify how many times he asked Defendant to exit the vehicle or, more importantly, what her responses were when he did.

¶ 36 We find the evidence leaves a reasonable doubt as to whether Defendant did anything more than merely argue with Officer Dowling about the validity of his act of ordering her from her vehicle. Defendant's act of arguing with Officer Dowling about his authority to

order her from her vehicle does not constitute the offense of resisting or obstructing in violation of section 31-1 of the Code. *Baskerville*, 2012 IL 111056; *Bohannon*, 403 Ill. App. 3d at 1077. Section 31-1 does not "proscribe mere argument with a policeman about the validity of an arrest or other police action." *Raby*, 40 Ill. 2d at 399.

¶ 37 There is also no evidence from which to reasonably infer Defendant's questioning of Officer Dowling's authority impeded his performance of a lawful act. There is no testimony as to the amount of time that elapsed between the time when Officer Dowling first asked Defendant to exit the vehicle and when she complied. Officer Dowling only testified to the amount of time that passed between placing Defendant in custody and placing her in his police vehicle (which was only 45 seconds) and not the length of the entire stop. Defendant's testimony suggests Officer Dowling asked her to exit the vehicle once, she asked why, and he handcuffed her.

¶ 38 The evidence leaves a reasonable doubt as to whether Defendant impeded or hindered Officer Dowling within the meaning of the statute. We do not make a credibility determination between Defendant and Officer Dowling. Rather, we find there is no evidence from which to infer Defendant's conduct impeded or hindered a lawful act other than a brief delay occasioned by the protected conduct of verbal disagreement. *Bohannon*, 403 Ill. App. 3d at 1077 ("*Raby* and its progeny reveal a concern that the phrase 'resists or obstructs' is not defined so broadly that it places citizens in jeopardy of an arrest for mere verbal disagreement.").

¶ 39 Nor do we find that the testimony gives rise to any reasonable inference that Defendant's conduct caused the officers to put themselves in danger. Thus, this case is

distinguishable from *Synnott*, in which the court held evidence that the defendant in that case repeatedly disobeyed the arresting officer's order to exit the vehicle was sufficient to sustain a conviction for obstructing a peace officer. *Synnott*, 349 Ill. App. 3d at 229. The *Synnott* court reasoned that a meaningful threat of prosecution for the sort of noncooperation that occurred in that case was necessary to reduce the likelihood of physical confrontation. *Id.* at 225, 228 (the trial court found that "after four occasions [the defendant] did not remove himself [from the vehicle], and then momentarily did not comply with the officer pulling his arm; although he then immediately did comply" (internal quotation marks omitted)). The officers in this case did not testify to any concern for their safety when Officer Dowling ordered Defendant from her vehicle. Officer Warren only testified that Officer Dowling had to place Defendant in their police vehicle *after she was in custody* due to safety concerns.

¶ 40 There is no evidence or any reasonable inference that Defendant's noncooperation (if it could be called that since the evidence only supports a finding that all she did was ask why she had to get out of her vehicle) gave rise to a likelihood of a physical confrontation. Thus, the evidence in this case regarding the order to exit the vehicle does not implicate the considerations of officer safety that were at the heart of the decision in *Synnott*. *Shenault*, 2014 IL App (2d) 130211, ¶ 22 (discussing *Synnott*). The inference that Defendant did nothing more than to initially question the officer's authority is bolstered by the fact that Defendant ultimately exited the vehicle voluntarily--a fact to which both officers testified. Accordingly, we find that the evidence leaves a reasonable doubt as to whether Defendant's conduct--specifically the alleged failure to follow a verbal direction to exit her vehicle--rose to the level of a violation of the statute.

¶ 41 b. Stiffening of Arm

¶ 42 The trial court found the evidence sufficient to prove Defendant guilty even if Defendant stiffened her arm for one second. We disagree with the trial court's judgment. We find the conduct testified to by the officers does not prove Defendant's guilt beyond a reasonable doubt.

¶ 43 Initially, we note that the evidence is conflicting as to the alleged act by Defendant. Officer Dowling initially testified that while Defendant was still seated in her vehicle, he opened the driver's door and placed a handcuff on her left wrist. Moments later Officer Dowling testified after Defendant exited the vehicle he placed handcuffs on her wrist. He then testified at that point Defendant stiffened her arms and began to flail. If Officer Dowling's testimony is taken as true, then the State's theory that Defendant flailed her arms to resist being handcuffed is unsustainable. Officer Dowling testified he placed one handcuff on Defendant while she was in her vehicle then placed another handcuff on Defendant after she exited the vehicle. Thus, according to Officer Dowling, Defendant was completely restrained before she allegedly resisted *being restrained*. Then, Officer Warren's testimony is inconsistent with Officer Dowling's testimony. Officer Warren testified that Officer Dowling only handcuffed Defendant's left wrist before he had to assist to handcuff Defendant's right wrist (after he corrected himself from saying left wrist). But if Officer Warren's testimony is believed, then Officer Dowling--the officer Defendant was allegedly resisting--provided inconsistent testimony as to the events at the core of the prosecution.

¶ 44 The inconsistencies on the face of the testimony we have noted would be fatal to the State's case. "We recognize that it is for the fact finder to judge how these flaws in [the]

testimony affect the credibility of the whole. However, the fact finder's judgment must be reasonable in light of the record. [Citation.] When taken together, these inconsistencies are not minor *** but, rather, seriously undermine [the] testimony on material points and when taken together raise unresolved questions about the whole of [the] testimony. [Citation.]" *People v. Herman*, 407 Ill. App. 3d 688, 707 (2011). While the inconsistencies in the testimony in this case may not make it "impossible for any fact finder reasonably to accept any part of it" (*id.*) they do inform our consideration of other flaws in the evidence, which are independently sufficient to lead this court to find the State failed to meet its burden of proof.

¶ 45 First, our examination of the record shows Officer Dowling never testified he gave Defendant a verbal order to place her arm behind her back to be handcuffed. Officer Dowling testified he "informed her she was being placed into custody for driving without a driver's license." When asked what happened next, Officer Dowling responded: "I placed the handcuffs on her wrist, and she fell forward. She stiffened her arms and began to flail." Despite the inconsistencies noted above, Officer Dowling never testified he ordered Defendant to place her arms behind her back, told her what to do with her arms, or even informed her that he was going to handcuff (or finish handcuffing) her. Defendant cannot be expected to know what was in Officer Dowling's mind or what the next step in the procedure would be after he simply "informed her she was being placed into custody." The record is insufficient to prove Defendant knowingly disobeyed an order to be handcuffed. When asked "how" Defendant stiffened her arm Officer Dowling testified "She jerked." Officer Warren testified Defendant's arm was stiff for a second or two. Given the miniscule and likely involuntary act at issue and the negligible duration of the alleged act of resistance, the absence

of an order to be handcuffed is highly probative that Defendant did not "knowingly" resist or obstruct the officers from restraining her.

¶ 46 Second, there is no evidence Defendant attempted to struggle or wrestle with either officer. Rather, Defendant's reaction can at best be described as a physical manifestation of the shock she must have felt at learning she was being placed under arrest for driving without a license when she knew she had a valid driver's license--a fact the officers could have easily verified even if Defendant could not produce her license. We find the evidence in this case insufficient to support a conviction. See *People v. Thompson*, 2012 IL App (3d) 100188, ¶ 13 ("Acts of struggling or wrestling with a police officer are physical acts of resistance that will support a conviction for resisting a peace officer.").

¶ 47 Finally, the testimony was that from the time Officer Dowling placed Defendant in custody until she was in the police vehicle was less than 45 seconds. In *Thompson*, an officer testified he "spent 30 to 45 seconds trying to handcuff [the] defendant while defendant threw elbows towards his head." *Thompson*, 2012 IL App (3d) 100188, ¶ 14. Here, in stark contrast, there is no evidence of any actual interference with the performance of the officers' duty. The two officers were quickly able to place handcuffs on Defendant.

¶ 48 The State's reliance on *McCoy* is misplaced. In *McCoy*, the court found that accepting the officer's version of events, the evidence established that the defendant in that case "struggled against his efforts to escort her out of the store, that she tensed up and pulled her hand away from him during handcuffing, *** she struggled against his efforts to escort her to the security office, and that she struggled and flailed about once inside the security office." *McCoy*, 378 Ill. App. 3d at 962-63. The defendant in *McCoy* did not just tense up her

handcuffed hand and turn her other hand away from the officer. *Id.* at 956. She also called to her son that the officer was hitting her causing the officer to have to push her son away so that the officer could complete the arrest. *Id.* Further, the defendant in *McCoy* was still resisting while walking to the security office. *Id.* at 957. Finally, the defendant in *McCoy* continued to be belligerent with the arresting officer in the security office of the store in which she was arrested and spat in his face. *Id.*

¶ 49 Nothing in Defendant's conduct is so outrageous as to reasonably justify a comparison of Defendant's conduct to that in *McCoy*. In this case, taking the officers' version of events as true, none of the types of persistent and repeated acts of physical resistance that occurred in *McCoy* are present here. We find the reasoning in *McCoy* consistent with our view that when the alleged act of resistance is brief, as in this case, conduct which threatens officer safety is an important if not dispositive consideration in weighing the sufficiency of the evidence to sustain a conviction under section 31-1. That concern for officer safety is not present in this case. In this case, Defendant was quickly handcuffed without subjecting the officers to additional danger and, the officers agree, she complied at least until she got to the squad car (and, as we will discuss below, the State failed to prove beyond a reasonable doubt Defendant resisted then). Those facts support our view the evidence is insufficient to prove Defendant knowingly resisted or obstructed Officers Dowling and Warren beyond a reasonable doubt. See *Shenault*, 2014 IL App (2d) 130211, ¶ 22.

¶ 50 We do not hold that stiffening or pulling away may never constitute resisting or obstructing in violation of section 31-1. However, in this case, based on the weakness of the testimony and absence of the type of evidence this court has relied upon to uphold

convictions under section 31-1, we find that no rational trier of fact could find that Defendant's act of stiffening for one or two seconds or making a jerking motion before being completely handcuffed interposed an obstacle that impeded or hindered the officers in the performance of their authorized duties. See *Baskerville*, 2012 IL 111056, ¶ 23.

¶ 51 c. Refusing to Sit in the Police Vehicle

¶ 52 Defendant denied resisting being placed into the squad car. Officer Dowling testified that Defendant initially refused to get into the vehicle willingly, and that he had to force Defendant into the officers' vehicle "[w]ith a push and a shove to her upper chest area." Officer Dowling did not testify that he verbally ordered Defendant into the vehicle and what, if any, response Defendant gave. Officer Warren testified that Officer Dowling "had to assist [Defendant] in to get her into the car." In *Taylor*, 2012 IL App (2d) 110222, ¶ 17, the court held that "[i]n our view, *Baskerville* confirms that the relevant issue in weighing a sufficiency-of-the-evidence challenge to a conviction for obstruction of justice is whether the defendant's conduct actually posed a material impediment." Viewing the evidence in a light most favorable to the State, we find there is insufficient evidence to establish that Defendant posed a material impediment to being placed into the officers' vehicle.

¶ 53 Absent an order to sit in the vehicle, Defendant could not have "refused" to sit in the squad car. We will not give any credence to the suggestion a police officer can march an arrestee to the door of their car and wait for the arrestee to take the initiative to hop in or to the consequence that if she does not, she can be charged with resisting or obstructing. Even were we to infer that Officer Dowling did give Defendant a verbal command to sit in his police vehicle, Officer Dowling did not testify any time elapsed between the order and the

shove or that Defendant engaged in a physical act of resistance against being placed into the vehicle. First, we do not know whether, at the time they got to the vehicle, Defendant was questioning Officer Dowling's authority to arrest her, which would not violate the statute. *Bohannon*, 403 Ill. App. 3d at 1077 (citing *Raby*). The officers testified that Defendant was demanding to see a supervisor. It is reasonable to infer that Defendant either demanded to see a supervisor before sitting in the squad car or questioned the officers' authority to arrest her for not carrying her driver's license, and there is no evidence in the record from which to reasonably draw a contrary inference in support of the verdict. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004) ("the reviewing court must view the evidence 'in the light most favorable to the prosecution.' [Citation.] This means the reviewing court must allow all reasonable inferences from the record in favor of the prosecution. However, a reviewing court may not allow unreasonable inferences. [Citation.] It follows that if only one conclusion may reasonably be drawn from the record, a reviewing court must draw it even if it favors the defendant.").

¶ 54 Second, Officer Dowling did not testify that Defendant--who was in handcuffs--squirmed or twisted her body away from the car. He did not testify that when he pushed Defendant in the chest she pushed back against him. There is no direct testimony of any act of "resistance." See *Baskerville*, 2012 IL 111056, ¶ 25 (" 'Resist' is defined as 'to withstand the force or the effect of' or the exertion of 'oneself to counteract or defeat.' [Citation.]"). The most that can be reasonably inferred is that Officer Dowling told Defendant to sit down, she did not, and then he shoved her in the chest and she sat in their vehicle. We do not know if Officer Dowling gave Defendant an opportunity to comply after her initial refusal, whatever

the basis for it may have been, before the officer shoved her. However, we do know all of this happened quickly because the total passage of time from initially placing Defendant into custody and getting her into the police vehicle was 45 seconds or less.

¶ 55 Given the absence of evidence of words of resistance or a physical act of resistance to being placed in the police vehicle, coupled with the admittedly short duration of the entire encounter, taking the evidence in a light most favorable to the State we do not believe that any rational trier of fact could find that these facts prove beyond a reasonable doubt Defendant impeded or hindered the officers in placing Defendant in their police vehicle. See *Baskerville*, 2012 IL 111056, ¶ 23.

¶ 56 4. Our Holding

¶ 57 This court does not reverse findings by the trier of fact that the evidence is sufficient to prove the elements of the offense charged beyond a reasonable doubt unless the evidence "is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48. Here, considering the evidence in a light most favorable to the State, the evidence compels the conclusion that no reasonable person could find the evidence proved beyond a reasonable doubt Defendant resisted or obstructed a peace officer. Therefore, Defendant's conviction must be reversed. Accordingly, we have no need to determine whether Defendant received ineffective assistance of counsel.

¶ 58 CONCLUSION

¶ 59 For the foregoing reasons, the circuit court of Cook County is reversed.

¶ 60 Reversed.