

No. 1-14-0832

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 3714
	)	
ABUL-MASWWIR BEY,	)	Honorable
	)	James M. Obbish,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE REYES delivered the judgment of the court.  
Justices Gordon and Lampkin concurred in the judgment.

**O R D E R**

¶ 1 *Held:* Judgment affirmed over defendant's challenge to the sufficiency of the evidence to sustain his felony conviction for resisting or obstructing a peace officer.

¶ 2 Following a jury trial, defendant Abul-Maswwir Bey was found guilty of a Class 4 felony when he resisted or obstructed a peace officer resulting in injury to the officer. He was sentenced to 18 months of probation, with the first six months in jail, and 80 hours of community service.

On appeal, defendant contests the sufficiency of the evidence to sustain his felony conviction and

maintains that it should be reduced to misdemeanor resisting or obstructing a peace officer because the State failed to prove the officer was injured. For the following reasons, we affirm.

¶ 3 Defendant's conviction arose from events on February 11, 2011, when he resisted Chicago police officer Joseph Carroll's attempt to arrest him at a mixed-use property in Chicago. Defendant was charged with aggravated battery<sup>1</sup> of an officer and resisting or obstructing a peace officer resulting in an injury to the officer.

¶ 4 At trial, Mark Reiter testified he was the property manager for a building located at 2447 East 79th Street, which was in the midst of foreclosure proceedings. The building was mixed-use, with retail storefronts on the ground floor and apartments upstairs. Around 3 or 4 p.m. on the day in question, Reiter went to a retail space in the building which he believed had been vacated by the previous tenant, Darrell Wilson. When Reiter went inside, he observed defendant standing by a table. Reiter stayed by the door and introduced himself as the property manager. Defendant told Reiter to get out of "his" building and Reiter responded that defendant was squatting. Threatening to handcuff Reiter, defendant walked toward him. Defendant came within a couple of feet of Reiter when he pulled out steel handcuffs. Reiter left the unit and called 911.

¶ 5 When the police arrived, Reiter informed the officers he called because defendant, a squatter, had tried to handcuff him. Reiter pointed to the retail space and indicated defendant had no right to be there. Reiter, a male officer, and a female officer went inside, where they found defendant and a woman. The male officer asked defendant who he was and defendant asserted it

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<sup>1</sup> Defendant was charged with aggravated battery on March 11, 2011, under section 12-4(b)(18) of the Criminal Code (720 ILCS 5/12-4(b)(18) (West 2010)), which enhanced battery to aggravated battery if the defendant knew the victim was an officer performing authorized duties. Effective July 1, 2011, the offense was amended and renumbered as section 12-3.05 (720 ILCS 5/12-3.05 (West Supp. 2011)). Pub. Act 96-1551 (eff. July 1, 2011).

was his property. After the male officer announced defendant was under arrest for squatting, the woman attempted to place herself between the officer and defendant, but the female officer removed her. Defendant backed up and pushed away from the officers. The male officer and defendant began to struggle, with the officer attempting to turn defendant around and place defendant's hands behind his back. Defendant was "pushing and taking his hands and pushing away, potential swings. It was kind of just a melee of resisting." Reiter was by the door, keeping it closed because the lock was damaged and was not working properly. Reiter looked back and forth between the struggle and the door, where people were starting to gather. At one point, Reiter turned back and observed the officer and defendant on the ground. While on the ground, he saw "a struggle to get [defendant] in handcuffs and the officer wasn't able to do that." Eventually, more officers arrived and helped the male officer handcuff defendant.

¶ 6 Chicago police officer Joseph Carroll testified he and his trainee, Officer Saldona<sup>2</sup>, responded to a call of an assault and criminal trespass in progress on the day in question. They arrived at 2447 East 79th Street in a marked police vehicle and in full police uniforms. There, Mark Reiter, the 911 caller, explained what happened. The officers entered the commercial space and found defendant and his fiancée, Channel Anderson Bey, inside. When Officer Carroll announced defendant was under arrest, Anderson Bey stepped between him and defendant. Officer Saldona caused Anderson Bey to step away and Officer Carroll ordered defendant to put his hands behind his back. Defendant refused, then placed his hands on a table in front of him, tensed up, and held on tightly with his thumbs under the table. Defendant said, "[N]ot under my

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<sup>2</sup> Officer Saldona's full name was not provided.

laws of the State of Illinois" and asserted the arrest was unlawful because "it was a charter location." Officer Carroll again asked defendant to put his hands behind his back.

¶ 7 Officer Carroll testified that when defendant did not comply, he grabbed onto defendant's lower right forearm and attempted to handcuff him. Defendant's right elbow struck Officer Carroll in his upper chest. When asked if he felt pain when defendant elbowed him, Officer Carroll responded that he did. Officer Carroll attempted a tactical maneuver the police department trained him to use when a person becomes a "resister." He was trained to grab the person by the forearm and roll his shoulder and arm in "kind of a tripping motion" in order to roll the resister to the ground. The maneuver failed. Defendant elbowed him in the chest a second time and used the table as leverage, preventing Officer Carroll from handcuffing him. Attempting to separate defendant from the table, Officer Carroll grabbed defendant from behind and with his arms around defendant's waist in a sort of "bear hug," he tried to pick defendant up and toss him. Flinging himself backward, defendant "flailed his arms and twisted himself in a twisting motion." This knocked Officer Carroll to the ground and caused him pain in his left elbow, his neck, his left upper leg, and his left side.

¶ 8 Defendant attempted to flee from the building, but Officer Carroll could not get up because "[he] was injured," so he tripped defendant. While both men lay on the ground, Officer Carroll radioed for assistance because defendant was "becoming an assailant." Officer Carroll crawled over to defendant, grabbed his wrist, and told defendant he would use pepper spray if he did not put his hands behind his back. Defendant placed his hands underneath his body. Officer Carroll used the pepper spray, but could not handcuff defendant because he was struggling and flailing his arms in an attempt to stand. During the struggle, two more police officers arrived and

assisted Officer Carroll to hold defendant down and handcuff him. After defendant was arrested, Officer Carroll searched him and recovered blue steel handcuffs on his person.

¶ 9 On cross-examination, Officer Carroll testified he did not ask defendant to explain his presence before announcing he was under arrest. He suspected defendant was trespassing because of what Reiter told him. He acknowledged that he did not seek medical attention and did not have any photographs detailing the injuries he sustained that day.

¶ 10 Chicago police detective Stan Kalicki testified he investigated the incident and summarized his findings in a report. He interviewed several individuals including Officer Carroll and defendant. He read defendant his *Miranda* rights and then interviewed him at the police station. According to Detective Kalicki, defendant told him, "The police officer went there to place him in cuffs, at which time he said he tensed up and trying to defeat the arrest after that." When asked how Officer Carroll became injured, defendant said he did not "know how that happened. The only thing he did was he tensed up strongly." Defendant confirmed that Officer Carroll fell to the ground, but said he did not know how that occurred.

¶ 11 On cross-examination, Detective Kalicki testified that some details from his interview with Officer Carroll were not in his report, including that defendant grabbed the table firmly and held onto it; defendant elbowed Officer Carroll; he felt pain in his left wrist when he fell to the ground; and defendant was "resisting, moving his arms" while they were on the ground. On re-direct, Detective Kalicki testified that his report did include Officer Carroll's description of what defendant did with his arms before he went down: "At which time defendant Bey tensed his arms up and would not allow Carroll to handcuff him." The report was a summary and he had an independent recollection of the interview.

¶ 12 The State rested. Defendant moved for a directed verdict, which the court denied.

¶ 13 Defendant called multiple witnesses in his case in chief. Officer James Bansley testified that he interviewed Officer Carroll after the incident and prepared an arrest report. In the section pertaining to the victim, he checked "no" next to a box marked "injured." Defendant called the previous tenant, Darrell Wilson, who testified he and defendant had an agreement to share the unit for religious purposes. Sometime before February 11, 2011, he gave defendant a key to the building. Defendant also recalled Detective Kalicki to testify that during his interview, Officer Carroll told the detective that defendant grabbed on to the table, elbowed him, and pushed off, causing him to fall on his left shoulder and right wrist. But, he did not complain of "great pain."

¶ 14 Channel Anderson Bey testified that she and defendant went to the unit to fix a leak in the ceiling at about 2:30 p.m. on February 11, 2011. Defendant had a key for the unit and the lock was not broken or damaged. At some point, a male police officer, later determined to be Officer Carroll, came to the front door. Anderson Bey testified that "as soon as [Officer Carroll] came in, he said, oh, I know who you guys are. You guys are the Moorish. Turn around, put your hands behind your back. You are going to jail." Defendant backed away, asking the officer what he was doing there, but Officer Carroll did not give him a reason for the arrest. Defendant put his hands palm down on the desk, but he did not hold the desk or stiffen his arms. In the midst of unsuccessfully attempting to "take [defendant] down," Officer Carroll went down himself. Defendant did not elbow the officer or try to run. Instead, he lay on his stomach with his hands on the ground. Officer Carroll moved on top of him, pulled out some patches of his hair, and "maced" him.

¶ 15 On cross-examination, Anderson Bey denied stepping in between Officer Carroll and defendant. Although Officer Carroll fell to the ground next to where defendant stood, he had to stand and walk over to defendant in order to pepper spray him. Defendant voluntarily laid on the floor, but placed his hands down on the floor, not behind his back.

¶ 16 Defendant testified that on the day in question, he went to the unit with Anderson Bey to fix a leak in the ceiling and entered with a key. He denied approaching Reiter with handcuffs or threatening to handcuff him. When the police arrived, defendant opened the door and Officer Carroll immediately told defendant he was under arrest. Defendant testified, "He said, I know what you guys are. I know about the Moors. Put your hands behind your back. You are under arrest." Defendant asked why he was under arrest but Officer Carroll "just kept saying put your hands behind your back, put your hands behind your back." Defendant claimed that he placed his hands flat on the table to indicate he did not mean any harm, and denied grabbing hold of the table or stiffening his arms. Officer Carroll grabbed his forearm and tried to trip him and bring him down, but fell to the ground himself. When defendant observed that Officer Carroll had fallen, he knelt down and placed his hands behind his head. Officer Carroll then "thrust himself" onto defendant from behind. Defendant lay prone with his hands behind his head, but did not place his hands underneath himself. Officer Carroll pulled out locks of defendant's hair and pepper sprayed him in the face. Defendant admitted the police recovered handcuffs from his person after he was arrested.

¶ 17 On cross-examination, defendant admitted he knew the officers were police when they arrived in their uniforms but still backed away when Officer Carroll said he was under arrest. He

denied that Anderson Bey stepped between him and Officer Carroll. He also denied making a statement to Detective Kalicki after his arrest and could not recall being read his *Miranda* rights.

¶ 18 The jury was instructed, in relevant part, that "bodily harm" was necessary to convict defendant of aggravated battery of an officer, and "injury" to the officer was necessary to convict him of the felony enhancement to his resisting or obstructing a peace officer charge. During deliberation, the jury asked for a definition in the law of "injury" and "bodily harm." Defense counsel agreed to the court's response that the jury had sufficient information to reach a determination. The jury thereafter found defendant guilty of obstructing a peace officer proximately causing "injury," but acquitted defendant on the charge of aggravated battery. Defendant's posttrial motion for a new trial was denied. Defendant was sentenced to 18 months probation, with incarceration for the first six months, and 80 hours of community service.

¶ 19 On appeal, defendant contends that his conviction for the Class 4 felony of resisting or obstructing a peace officer should be reduced to a Class A misdemeanor because the State failed to prove beyond a reasonable doubt that his actions caused "an injury" to Officer Carroll. Defendant argues that Officer Carroll did not testify credibly about his alleged injuries and that his "minimal" testimony that he felt pain was undermined by his statements and actions on the day of the offense. Specifically, he emphasizes that Officer Carroll, when interviewed by Officer Bansley, apparently did not report any injury because Officer Bansley did not check that box in his incident report; that Officer Carroll did not seek any medical treatment; and that the State did not produce photographs or medical reports to document any injuries. Defendant further argues that the jurors apparently struggled with the issue of whether Officer Carroll suffered an injury,



as they asked for definitions of the terms "injury" and "bodily harm" during deliberations and acquitted defendant of aggravated battery of a peace officer.

¶ 20 When a defendant contests the sufficiency of the evidence to sustain his conviction, the relevant 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 crime beyond a reasonable doubt. *People v. Woods*, 214 Ill. 2d 455, 470 (2005). We may not overturn a conviction based on insufficient evidence unless the proof is so improbable or unsatisfactory that a reasonable doubt exists as to the defendant's guilt. *People v. Williams*, 193 Ill. 2d 306, 338 (2000).

¶ 21 A defendant commits the Class A misdemeanor of resisting or obstructing a peace officer when he "knowingly resists or obstructs the performance by one known to the [defendant] to be a peace officer \*\*\* of any authorized act within his official capacity." 720 ILCS 5/31-1(a) (West 2010). If the violation proximately caused "an injury" to the peace officer, the defendant is guilty of a Class 4 felony. 720 ILCS 5/31-1(a-7) (West 2010). Whether a peace officer suffered an injury is particularly a jury question. *People v. Johnson*, 2015 IL App (3d) 130610, ¶ 25.

¶ 22 As noted by the parties, no case law exists defining what constitutes "an injury" in the context of section 31-1(a-7). In lieu of a definition of the term "an injury" as it relates to resisting or obstructing a peace officer, the parties rely upon this court's construction of the term "any injury" in the home invasion statute to guide their analysis. 720 ILCS 5/19-6(a)(2) (West 2012). In that context, the term "any injury" was defined in *People v. Garrett*, 281 Ill. App. 3d 535, 542 (1996), as "an act that hurts, *i.e.* that causes bodily pain." In *Garret*, we held that proof of injury did not require "physical evidence of bodily harm, such as bruises, lacerations," and the like.

*Garrett*, 281 Ill. App. 3d at 542. Rather, the victim's testimony that the defendant's conduct was very painful was sufficient to show injury. *Id.*

¶ 23 In the instant case, the evidence, viewed in a light most favorable to the prosecution, was sufficient to prove defendant proximately caused an injury to the officer. Officer Carroll testified that as he attempted to handcuff defendant, defendant elbowed him in the chest, causing him to feel pain. Defendant then flailed his arms around and knocked Officer Carroll to the ground, which caused him to feel pain in his neck, left side, left upper leg, and left elbow. Officer Carroll testified he could not stand up immediately after being knocked down "because [he] was injured." While defendant argues that Officer Carroll's testimony was insufficient to support a guilty verdict, the jury apparently believed the officer's testimony that defendant's actions caused him pain, and we will not reassess that credibility determination. See *Johnson*, 2015 IL App (3d) 130610, ¶¶ 25-27 (affirming defendant's conviction for resisting arrest resulting in injury to a police officer over defendant's attack on the officer's credibility where the jury apparently believed the officer's testimony). We cannot say that the evidence was so unsatisfactory or improbable that no reasonable trier of fact would find defendant guilty beyond a reasonable doubt. *Williams*, 193 Ill. 2d at 338.

¶ 24 Defendant nevertheless maintains Officer James Bansley's testimony that he checked "no" next to the box marked "injury" in his police report undermines Officer Carroll's credibility and testimony that he was injured. However, the jury determines the credibility of the witnesses, weighs the evidence, draws reasonable inferences therefrom, and resolves any conflicts in the evidence. *People v. Gary*, 2016 IL App (1st) 134012, ¶ 51. Here, the jury heard both Officer Carroll's and Officer Beasley's testimony and resolved any conflict between the two in favor of

Officer Carroll. We decline defendant's invitation to overrule the jury on this matter. See *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006) (when reviewing evidence, a court may not substitute its judgment for that of the trier of fact).

¶ 25 Defendant points out that Officer Carroll did not seek treatment for any injuries and the State did not present physical evidence of their existence. The State, however, was not required to present physical evidence of Officer Carroll's injuries to sustain his conviction. See *Garrett*, 281 Ill. App. 3d at 542. Moreover, a jury may find that the State proved "injury" or "bodily harm" without medical treatment and documentation. See *People v. Bishop*, 218 Ill. 2d 232, 250 (2006) ("In determining whether a defendant's actions caused bodily harm, direct evidence of injury may be considered or the trier of fact may infer injury based upon circumstantial evidence in light of common experience."). Accordingly, relying on common experience, the jury in the instant case could reasonably infer Officer Carroll was injured based on his testimony that he felt pain and claimed he was injured when defendant knocked him to the ground, and that he felt pain when defendant elbowed him in the chest.

¶ 26 We are mindful of defendant's contention that his acquittal of aggravated battery and the jury's request for a definition of "bodily harm" and "injury" during deliberation undermine the jury's verdict. Defendant equates "an injury" and "bodily harm" and then assumes his acquittal of aggravated battery means "bodily harm" was not proven. Therefore, defendant argues, the jury's finding that Officer Carroll suffered "an injury" is suspect.

¶ 27 Defendant's argument relies upon the improper assumption that his acquittal necessarily means the evidence was insufficient to show "bodily harm." Defendants may not challenge convictions on the sole basis that they are legally inconsistent with acquittals on other charges.

*People v. Jones*, 207 Ill. 2d 122, 133-34 (2003). This is partly because it cannot be known who the error benefits and there is no reason to assume the acquittal is the correct verdict. *Id.* at 130. Other explanations for an apparent inconsistency, such as a jury's leniency, are just as likely as the conclusion that the prosecution failed to prove both offenses. *Id.* at 130, 133-34. Here, the evidence was otherwise sufficient to convict defendant and speculation into the reasons for his acquittal does not render the evidence so improbable or unsatisfactory that no reasonable trier of fact could find defendant guilty beyond a reasonable doubt. *Williams*, 193 Ill. 2d at 338.

¶ 28 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 29 Affirmed.