2016 IL App (1st) 143315-U

SIXTH DIVISION
Order Filed: December 9, 2016

No. 1-14-3315



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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. 13 MC2 001545 |
| | ) | |
| JOZEF KOMOSA, | ) | Honorable |
| | ) | Timothy J. Chambers, |
| Defendant-Appellant. | ) | Judge, Presiding. |

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PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

**ORDER**

¶ 1 *Held*: We affirm the defendant's conviction of obstructing a peace officer because the evidence was sufficient to prove him guilty beyond a reasonable doubt.

¶ 2 Following a jury trial, the defendant, Jozef Komosa, was convicted of two counts of resisting or obstructing a peace officer (720 ILCS 5/31-1(a) (West 2012)) and sentenced to 307 days, time served. On appeal, the defendant argues that the evidence was insufficient to find him guilty of obstructing a peace officer. For the reasons that follow, we affirm.

¶ 3 The defendant was charged by misdemeanor complaint with two counts of resisting or obstructing a peace officer stemming from an incident on May 5, 2013, in Niles, Illinois.

Relevant here is the obstructing count, which charged the defendant knowingly obstructed a peace officer's issuance of a traffic citation. Through an interpreter, the defendant represented himself at trial *pro se*, where the following evidence was presented.

¶ 4 Niles police officer Gene Krause testified that, on May 5, 2013, around 3:02 p.m., he was working in the vicinity of the 7300 block of Waukegan. Krause noticed the driver of a northbound vehicle not wearing a seatbelt. He activated his emergency lights and stopped the vehicle in the parking lot of a gas station at Milwaukee Avenue and Waukegan Road. Krause, who was dressed in full uniform, was driving his marked police vehicle with emergency lights activated. Krause approached the driver's side of the vehicle to obtain the driver's license and insurance card. The vehicle contained a male driver and a female passenger. As Krause was approaching the vehicle, he noticed an individual, identified in court as the defendant, approximately 30 feet away on the sidewalk. Krause had previous contacts with the defendant and "knew" that the defendant was somebody he needed to watch. He "continued to watch" the defendant while speaking with the driver.

¶ 5 The defendant began to walk towards the stopped car. When he was about 20 feet away, Krause told him that he needed to leave the area and that "he was not needed there." The defendant stood there looking at Krause. Krause obtained the driver's license and insurance card and returned to his squad car, which was about 10 feet behind the vehicle he had stopped. At this point, Krause's squad car still had its emergency lights activated.

¶ 6 When Krause was inside his squad car running the driver's information, he observed the defendant walk "right up" to the driver's side window of the car that he had stopped. Krause again told the defendant to leave the area, but the defendant stood there and looked at Krause.

Krause raised his voice again, telling the defendant to leave the area and that he was obstructing his duties as a police officer. He warned the defendant that, if he did not leave, he would be arrested. The defendant told Krause "it was a free country," then leaned down and stuck his head inside the stopped vehicle.

¶ 7 Krause walked towards the defendant, who turned around and began to walk away. Krause told the defendant that he was under arrest for obstructing. The defendant continued to walk away. When Krause grabbed his arm, he pulled away, moving his arm forward and twisting the trunk of his body. Krause again grabbed his arm and the defendant pulled away again. Krause then brought the defendant to the ground and handcuffed him. He brought the defendant to the Niles Police Department where he was responsive to questions and answered in English. Krause described the noise at the scene as "very light" and noted there was not much traffic at the time.

¶ 8 On cross-examination, the defendant elicited from Krause that the defendant had given Krause "resistance" before. Krause stated that, given his previous contacts with the defendant and as a matter of officer safety, he "needed to make sure that [his] safety and people that [he] stop[s] are safe while [he] conduct[s] *** traffic stop[s], and third-party people who don't belong on the scene need[] to [depart] the area." Krause explained that he "could not perform [his] duties by writing out the citation and conducting the proper checks through the Secretary of State computer, not having to keep an eye on [the defendant]."

¶ 9 The defendant presented no evidence. The jury found him guilty of both counts of resisting or obstructing a peace officer.

¶ 10 After the defendant's amended written motion for a new trial was denied, the trial court sentenced him to 307 days, time served. The defendant's written motion to reconsider sentence was denied, and he filed a timely notice of appeal.

¶ 11 On appeal, the defendant argues that the evidence was insufficient to prove him guilty of obstructing a peace officer, where there was no evidence that he hindered or impeded Officer Krause in his official duties; namely, the issuance of a traffic citation. He further asserts that there was insufficient evidence to prove that he "knowingly" obstructed the officer.

¶ 12 The standard of review when challenging the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Cardamone*, 232 Ill. 2d 504, 511 (2009). "A reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of evidence or the credibility of witnesses." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). The jury, as trier of fact, has the responsibility to determine the credibility of witnesses, weigh the evidence and any inferences derived therefrom, and resolve any conflicts in the evidence. *People v. Kidd*, 2014 IL App (1st) 112854, ¶ 27. A conviction will not be overturned unless the evidence is so improbable, unsatisfactory, or inconclusive that a reasonable doubt of defendant's guilt exists. *People v. Belknap*, 2014 IL 117094, ¶ 67.

¶ 13 In order to sustain the conviction for obstructing a peace officer, the State had to prove the following elements: (1) the defendant knowingly obstructed a peace officer, (2) the peace officer was performing an authorized act within his official capacity, and (3) the defendant knew

he was a peace officer. 720 ILCS 5/31-1(a) (West 2012); *People v. Baskerville*, 2012 IL 111056, ¶ 32.

¶ 14 The complaint stated, in relevant part, that the defendant committed the offense of obstructing a peace officer in that he:

> "[k]nowingly obstructed the performance of Gene Krause #170 of an authorized act within his official capacity, being the issuance of traffic citation, knowing Gene Krause #170 to be a peace officer engaged in the execution of official duties. In that he refused to depart the area of the offending vehicles [*sic*] drivers [*sic*] side window after being given a lawful order to depart the vicinity."

¶ 15 Krause was dressed in his full uniform and had parked his marked police car with emergency lights flashing only 10 feet behind the car he had pulled over and approached. The defendant, therefore, could not be unaware that Krause was a peace officer performing an authorized act, *i.e.*, issuing a traffic citation. Indeed, he concedes that he knew Krause to be a peace officer and that Krause was performing an authorized act. Instead, the defendant argues the State failed to prove him guilty beyond a reasonable doubt of conduct constituting obstruction or that he did this conduct knowingly.

¶ 16 Obstruction refers to conduct that "interposes an obstacle that impedes or hinders" the peace officer in the performance of his authorized duties. *Baskerville*, 2012 IL 111056, ¶ 23. While physical conduct may be a means of obstruction, "this type of conduct is neither an essential element of nor the exclusive means of committing an obstruction." *Id.* Verbal argument or resistance alone is not an obstruction and, therefore, does not violate the statute. *People v. Berardi*, 407 Ill. App. 3d 575, 582 (2011). But, failure to leave a scene after being so

ordered may constitute obstruction. See *People v. Synnott*, 349 Ill. App. 3d 223, 227 (2004) ("merely refusing a police officer's lawful order to move can constitute interference with the officer in discharge of his or her duty"). Ultimately, whether conduct qualifies as an obstruction is a question of fact for the trier of fact, here the jury, based on the circumstances of the case. *Baskerville*, 2012 IL 111056, ¶ 23.

¶ 17 Krause testified that when he approached the pulled-over vehicle, the defendant began to walk towards him. Krause, for the first time, told him to leave the area. After he returned to his police vehicle and was processing the driver's license and insurance card, Krause witnessed the defendant walk "right up" to the driver's side window of the pulled-over car. Krause told him a second time to leave the area, but the defendant simply stared back at him. When the defendant was told a third time to leave the area or he would be arrested because he was obstructing Krause's duties as a police officer, the defendant responded that "it was a free country." Then, instead of moving away as he had been ordered, the defendant leaned forward and stuck his head through the driver's side window into the pulled-over car, which contained two occupants.

¶ 18 Given these facts, the State has proved that the defendant "hindered or impeded" Krause's official duties. Krause had already established contact with the driver through the driver's side window and had retrieved a driver's license and insurance card through this window. The defendant then approached this window and stuck his head inside it. Not only did the defendant disobey a direct order from a police officer, but by his physical act, he prevented Krause from being able to return the driver's information and issue the citation through the window.

¶ 19 Further, Krause was not able to focus on and complete processing of the driver's information. He testified that he had to order the defendant to leave the area twice while he was

in his police vehicle. He then had to stop processing the information after the defendant stuck his head into the pulled-over vehicle. Specifically, he testified he had had prior "resistance" encounters with the defendant and "could not perform his duties by writing out the citation and conducting the proper checks through the Secretary of State computer, not having to keep an eye on [the defendant]." Moreover, because the stopped vehicle contained two occupants, Krause needed to remove the defendant from the area to ensure the occupants' safety. While Krause testified that the defendant did not become aggressive until he began the arrest, the defendant's action of sticking his head inside the pulled-over vehicle required Krause to act. Thus, the defendant's conduct impeded Krause's ability to not only secure the scene but process the driver's information and issue the citation.

¶ 20 The defendant argues, relying on *Baskerville*, that there was no obstruction because Krause chose to arrest the defendant rather than issue a citation to complete the traffic stop. See *Baskerville*, 2012 IL 111056, ¶ 35 (finding the defendant's false statement that his wife was not home did not impede the police officer's ability to issue the wife a traffic citation where the officer chose not to search the home despite being given such permission by the defendant). Krause did not "choose" to stop issuing the citation. Krause was forced to do so because the defendant, who had already been told multiple times to leave the area, not only approached the driver's side window but physically intruded into the vehicle by placing his head inside. Given that there were two occupants in the car, Krause necessarily had to put their safety over processing and completing the traffic stop and, thus, left his squad car and arrested the defendant. He was forced to do so by the defendant's refusal to comply with his commands and overt interference with the traffic stop.

¶ 21 The defendant also cites to *People v. Berardi*, 407 Ill. App. 3d 575 (2011), for the proposition that any delay he caused to the officer in performing his authorized duties is "*de minimus* [*sic*]" and, thus, not obstruction. His reliance is misplaced. In *Berardi*, the defendant argued with a police officer when the officer ordered him to leave a private office. *Berardi*, 407 Ill. App. 3d at 580-81. The Third District found that the defendant's short verbal argument with the police officer did not rise to obstruction as he believed he had the authority to be present and was "merely disputing [the officer's] authority under the circumstances." *Id.* at 582-84. Here, however, the defendant did not merely verbally dispute Krause's authority. Instead, he ignored Krause's commands to leave and then physically stuck his head into an occupied vehicle, requiring Krause to leave his squad car to apprehend the defendant to secure the scene and protect the car's occupants. The delay in issuing the traffic citation caused by the defendant's actions was clearly not *de minimis.*

¶ 22 The defendant next argues that the State failed to prove that he "knowingly" obstructed Krause from completing the traffic stop. In order to be found guilty under the statute, an offender must knowingly obstruct a peace officer. 720 ILCS 5/31-1(a) (West 2012). A person acts knowingly when he or she is consciously aware that a result is practically certain to be caused by his or her conduct. 720 ILCS 5/4-5(b) (West 2012). This mental state may be inferred from circumstantial evidence, and these inferences are within the province of the jury. *People v. Lemke*, 384 Ill. App. 3d 437, 445-46 (2008).

¶ 23 Here, both direct and circumstantial evidence supports the finding that the defendant knowingly obstructed Krause. First, Krause specifically told the defendant to leave because he was obstructing Krause's duties as a police officer. The defendant responded that "it was a free

country." The defendant's response demonstrates that he heard Krause's warning that he was obstructing Krause's authorized duties but he still remained right next to the vehicle and even stuck his head inside it. Accordingly, the direct evidence established that the defendant acted knowing he was obstructing Krause's authorized duty, the issuance of the citation.

¶ 24 Second, circumstantial evidence also shows that the defendant acted knowingly. The defendant witnessed Krause retrieve a driver's license and insurance card from the driver of the pulled-over vehicle. Thus, it is reasonable to infer that Krause would return these items and the traffic citation to the driver the same way he retrieved them, through the driver-side window. The defendant's presence right beside the driver's window with his head inside the vehicle would impede Krause's ability to do so. There is, therefore, circumstantial evidence that the defendant had knowledge that his actions were obstructing Krause's authorized duties.

¶ 25 Viewing the evidence in the light most favorable to the State, a reasonable jury could find that the defendant hindered or impeded Krause's issuance of a traffic citation, and that he did so knowingly.

¶ 26 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 27 Affirmed.