

No. 1-12-1535

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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 MC1 221311
)	
TONY MITCHELL,)	Honorable
)	James Ryan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Harris and Justice Connors concurred in the judgment.

ORDER

- ¶ 1 *Held:* Complaint for obstructing a peace officer was sufficient where it alleged that defendant approached, yelled for the commander, and refused to leave; evidence of an authorized act was sufficient to sustain conviction for obstructing a peace officer where defendant impeded an officer's field interview of two other individuals; affirmed.
- ¶ 2 Following a bench trial, defendant Tony Mitchell was convicted of obstructing a peace officer and sentenced to one year of conditional discharge, fees, fines, and costs in the amount of \$250, and two days in jail. On appeal, defendant argues the complaint charging his offense was insufficient. Additionally, defendant contends the State failed to prove that he obstructed a peace officer and that the peace officer was engaged in an authorized act. We affirm.
- ¶ 3 The original complaint, dated September 1, 2011, charged the following:

"[That] [Tony Mitchell]***has, on or about [September 1, 2011] at the location of [1724 E. 71st St., Chicago, IL, Cook County] committed the offense(s) of obstructing a peace officer in that he/she knowingly and unlawfully [obstructed] P[.]O. Hughes knowing that [P.O.] Hughes was a police officer by approaching, yelling [']I want the commander right now[,]' and refusing to leave in violation of 720 Illinois Compiled Statutes 5/31-1(a)."

On November 28, 2011, defendant filed a motion to dismiss, arguing the complaint did not state how defendant obstructed an officer with a physical act and did not state the authorized act that the officer was performing. On December 2, 2011, the State asked to amend the complaint and added new language, and defendant's motion to dismiss was denied. On February 8, 2012, over defendant's objections, the State made the following changes to the complaint: (1) struck the language "unlawfully," (2) inserted the language "the performance of," and (3) added "while [P.O.] Hughes was engaged in an authorized act within his official capacity, being conducting a field interview." Officer Hughes re-swore to the amended complaint, which read:

"[That] [Tony Mitchell]***has, on or about [September 1, 2011] at the location of [1724 E. 71st St., Chicago, IL, Cook County] committed the offense(s) of obstructing a peace officer, in that he/she knowingly obstructed the performance of P[.]O. Hughes knowing that [P.O.] Hughes was a police officer by approaching, yelling [']I want the commander right now[,]' and refusing to leave while P.O. Hughes was engaged in an authorized act within his official capacity, being conducting a field interview[,], in violation of 720 Illinois Compiled Statutes 5/31-1(a)."

¶ 4 Defendant indicated that he understood the nature of the charge against him.

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¶ 5 At trial, Officer Hughes testified that on September 1, 2011, at approximately 4 p.m., he was in a car with two other officers, Officer Pucillo and Officer Grobla, in the area of 1711 East 71st Street in Chicago, and saw two individuals standing outside of a convenience store. From past experience, Officer Hughes knew that "they sell drugs in front of that store." The individuals looked in the officers' direction and entered the store, which, based on the officers' experience, indicated possible narcotics activity. After the officers drove to the store and approached the store's front door, the two individuals walked out, whereupon the officers pulled them aside for a field interview.

¶ 6 At "pretty much the same time as the other two individuals," but not with them, defendant walked out of the store and approached Officer Pucillo's gun side. Defendant stood within approximately three feet of Officer Pucillo, which Officer Hughes characterized as "dangerously close," and loudly stated, "I want to see the commander here***I want him here now," and that he was being harassed. When Officer Grobla told defendant he did not have the commander's phone number and asked if defendant had the number, defendant pointed at him and said, "no, you, you have his phone number." Officer Hughes explained that "this has nothing concerning [defendant]," the officers were conducting an investigation, and defendant needed to leave the area. During this time, defendant was very loud and boisterous, and Officer Hughes had to "continuously stop what [he] was doing to make sure [defendant was] not***going to try to disarm Officer Pucillo or what have you." According to Officer Hughes, defendant was "interrupting our search." Officer Hughes told defendant to leave three times, and on the third time, told defendant he was in custody. In response, defendant said, "[F]uck you" and walked off.

¶ 7 Officer Hughes further testified that when defendant was told he was under arrest, "we still hadn't properly [done] an officer's pat-down—safety pat-down search" of the other two individuals. Because Officer Hughes was not comfortable leaving Officer Pucillo with the other two individuals, Officer Hughes "was going to arrest [defendant] after we got done with this."

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At some point, Officer Hughes and Officer Pucillo permitted the two individuals to leave. A sergeant arrived a short time later, and the officers went across the street, where they saw defendant and placed him in custody. Officer Hughes acknowledged that during their interaction, defendant did not touch him, make any threatening movements, or stand between him and the individuals who were the subject of the field interview.

¶ 8 Officer Pucillo testified that while conducting the field interview and protective pat-down on September 1, defendant approached him within three feet of his gun side and yelled, "I want the commander here right now." Feeling unsafe, Officer Pucillo stopped the pat-down and field interview and told defendant a few times to back up because he was too close. After defendant had backed up a few feet, Officer Hughes told defendant "that we were conducting an investigation." Defendant said, "[F]uck that, this is harassment, I want the commander here." Officer Hughes told defendant that if he did not leave, he would be placed under arrest for obstructing the officers' investigation. Defendant again said he was being harassed and wanted the commander there. Then, Officer Hughes told defendant he was under arrest, to which defendant responded, "[F]uck that," and walked off. Once defendant had left, the officers spent a few minutes completing the field interview.

¶ 9 Officer Grobla testified that on September 1, defendant exited the store right after the two individuals who were the subject of the field interview. When Officer Grobla was in front of the store, defendant yelled for the commander. In response, Officer Grobla asked defendant if he had the number, and defendant said Officer Grobla had it, and pointed at him. Officer Grobla told defendant to step away and leave several times. While defendant was still present, Officer Grobla entered the store because something inside had caught his attention. Officer Grobla denied detaining defendant, did not recall searching his pockets, and did not recall walking defendant in the direction of the field interview of the other two individuals.

¶ 10 Defendant testified that he worked across the street from the convenience store, and as he was leaving the store on September 1, he was pulled outside and searched by a police officer,

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who put his hands in defendant's pockets. Defendant observed two other individuals being detained just to the west of him. When defendant asked why he was stopped, the officer replied that he had received a call, and when defendant asked for a description of the person the officers were searching for, the officer replied he did not know of one, which was why the officer was stopping everyone. In response to defense counsel's question, defendant said he asked for the commander because he did not know what was going on. When defendant's search was over, the officer directed defendant to stand with the two other individuals. Once there, an officer asked defendant, "[D]on't you know better than to come over here by a police with a gun[?]" and defendant replied that the other officer had directed him there. Defendant noted he worked across the street, and the officer told defendant to "leave before I lock you up." Defendant immediately left and went to his office, where he noticed that approximately \$85 was missing from his pockets. Defendant called 911 four times, stating that his money was stolen, and asked for a supervisor to come to the scene. Defendant also returned to the store to ask for video footage and to explain what had happened and when he arrived, he saw the officers in the store parking lot. Defendant then went outside to wait. Once the supervisor arrived, defendant explained to him what had happened. The supervisor left to speak with the other officers, and when the group returned, Officer Hughes told defendant, "[O]kay, if [you're] going to press charges on me, I'm going to take you to jail." Defendant denied that he had disobeyed any directions given by the officers, or that he had interfered with the officers, stepped between them, or said anything of a threatening nature.

¶ 11 Maged Salem, who worked at the convenience store at 1724 East 71st Street, testified that the store security cameras were working on September 1 and confirmed that a surveillance video that was admitted into evidence was from the store. The video displayed the date and time, including the hour, minutes, and seconds as they elapsed in real time. Relevant portions of the video, which does not have audio, are summarized below.

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¶ 12 At 3:46:43 on September 1, three police officers pulled into the convenience store parking lot and exited their car. Officer Hughes and Officer Pucillo detained two men on the side of the building, while Officer Grobla and defendant are seen facing each other in front of the store. At one point, the door to the store opened and Officer Grobla looked inside. At 3:47:31, Officer Grobla walked towards Officer Hughes and Officer Pucillo, and defendant walked behind him. Officer Grobla made a motion with his arm toward the wall of the store, defendant stood near the wall, and then Officer Grobla entered the store. At 3:48:22, defendant walked away from the Officer Hughes and Officer Pucillo, turning around briefly before continuing to walk through the parking lot. At 3:48:40, Officer Hughes walked into the store. At 4:03:44, defendant entered the store.

¶ 13 In response to seeing himself on the video, Officer Grobla testified that if he had told somebody to walk, he would walk behind that person, rather than let the person walk behind him. When Officer Hughes was asked if the video showed Officer Grobla detaining defendant, Officer Hughes responded, "apparently." Officer Hughes stated the video showed his body was facing defendant and he was talking to him. Officer Hughes acknowledged that defendant was in his presence for less than 50 seconds, but explained that when he went into the store, he was done with the safety pat-down, but not with the field interview. He thought the two individuals may have tossed something away in the store, and the officers were going to inspect the store security film.

¶ 14 The trial court found defendant guilty of obstructing a peace officer. The trial court stated:

"With respect to the element of the—obstruct them of any authorized act within their official capacity, I find the testimony of Peace Officers Hughes, Pucillo, and Grobla to be credible and consistent. Specifically as to Hughes and Pucillo, that during the course of their investigation defendant approached swearing and

yelling and asking for a commander, thereby jeopardizing their safety and interfering with their ongoing narcotics investigation.

I find that the videotape corroborates that testimony in that the video***shows Grobla approach an unknown male black and talking to him, and we now know that unknown male black to be [defendant].

At 3:47 and 33 seconds Grobla walks away in front of [defendant] and goes inside the store. I find that conduct not to be consistent with a police officer that would direct somebody to two police officers patting down two defendants up against the wall. So I find the police officers' testimony that with respect to that they did not direct defendant over there to be credible.

I also find defendant's testimony in this case not credible. Specifically defendant testified that he was grabbed by the arm and pulled from the store on the tape. The tape doesn't show that based on what I saw.

I also find [defendant] in his testimony testified that he could not remember what he said to the officers, Hughes and Pucillo, after he had approached them. But in response to a leading question***he said he was asking for the commander.

He also said he was pulled over where Pucillo and Hughes were conducting their investigation. The tape doesn't show that. The Court will also note that there's no audio on the tape.

In fact, Grobla walks into the store in front of [defendant] after patting him down and then goes into the store. Conduct,

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again, as I said not consistent with an officer that would direct somebody to two other officers with their back turned.

Probably the most incredible answer, however, here that [defendant] gave in his testimony is that he got back to the office and then he noticed his money was missing. I believe it defies common sense that during the course of a tape which shows that [defendant] is up against the wall with his face facing Officer Grobla that [defendant], I believe it defies common sense, would not at that very moment know whether or not money was taken from him***

In my opinion defendant called 911***because he was told by Police Officer Hughes he was going to be arrested for obstructing. I also find that he did, in fact, obstruct the officers. He did delay the officers in their pat down of the individuals up against the wall, and he did also delay them during the course of their investigation into narcotics activity at that location.

For all those reasons and the credible testimony of the police officers in the case, there will be a finding of guilty."

¶ 15 Defendant was sentenced to one year of conditional discharge, fees, fines, and costs in the amount of \$250, and two days in jail. On appeal, defendant argues that the complaint charging him with obstructing a peace officer was insufficient. In particular, defendant contends that the complaint did not sufficiently allege a physical act that caused an obstruction and how the obstruction occurred. Defendant also contends that the complaint did not set forth how the field interview was an authorized act.

¶ 16 The purpose of a charging instrument is to inform the accused of the nature of the charges against him so he can prepare his defense and allow any subsequent judgment flowing

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therefrom to be used as a bar to further prosecution for the same conduct. *People v. Gerdes*, 173 Ill. App. 3d 1024, 1029 (1988). Section 111-3 of the Code of Criminal Procedure of 1963 imposes specific pleading requirements for criminal charges (725 ILCS 5/111-3(a) (West 2010)), and when the sufficiency of a complaint is attacked before trial, as here, the complaint must strictly comply with those requirements. *People v. Nash*, 173 Ill. 2d 423, 429 (1996). At issue here is the requirement that the complaint set forth the nature and elements of the offense charged. 725 ILCS 5/111-3(a)(3) (West 2010).

¶ 17 A complaint for obstructing a peace officer must allege that the person knowingly obstructed the performance of one known by the person to be a peace officer of any authorized act within his official capacity. 720 ILCS 5/31-1(a) (West 2010). Because the offense of obstructing a peace officer is defined in general terms, the facts which constitute the crime must be specifically set forth (*People v. Hughes*, 229 Ill. App. 3d 469, 473 (1992)) and must notify the accused with reasonable certainty of the precise offense charged (*People v. Miller*, 253 Ill. App. 3d 1032, 1035 (1993)). However, as a preliminary pleading, the complaint need not contain more than a cursory statement of the facts informing the defendant of the charge. *People v. Rose*, 44 Ill. App. 3d 333, 338 (1976).

¶ 18 Here, the amended complaint sufficiently alleged how defendant obstructed Officer Hughes. Although a person may commit obstruction of a peace officer through a physical act, this is neither an essential element of the offense nor the exclusive means of committing an obstruction. *People v. Baskerville*, 2012 IL 111056, ¶ 23. Rather, the issue is whether the conduct interposed an obstacle that impeded or hindered an officer in the performance of an authorized duty. *Id.* Here, the complaint stated that defendant "knowingly obstructed the performance of Officer Hughes***by approaching, yelling 'I want the commander right now[,] and refusing to leave.'" Conduct such as approaching an officer, yelling, and refusing to leave has been found to constitute an obstruction. See *People v. Gordon*, 408 Ill. App. 3d 1009, 1017 (2011) (obstruction found where the defendant yelled profanities and threatened officers, and

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refused to leave despite being ordered to do so 5 to 15 times); *People v. Synnott*, 349 Ill. App. 223, 229 (2004) (obstruction found where defendant repeatedly disobeyed an officer's order to exit a vehicle). Here, the complaint sufficiently stated the alleged conduct that obstructed Officer Hughes.

¶ 19 In addition, the complaint sufficiently alleged the authorized act that Officer Hughes was performing. "Authorized" describes an act "endowed with authority," and a peace officer is endowed with the authority to stop a person in a public place for temporary questioning. *People v. Johnson*, 285 Ill. App. 3d 307, 309 (1996). Under section 107-14 of the Code of Criminal Procedure of 1963, a peace officer may stop a person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit, or has committed a crime, and may demand the name and address of the person and an explanation of his actions. 725 ILCS 5/107-14 (West 2010). The complaint stated that defendant's conduct occurred while Officer Hughes "was engaged in an authorized act within his official capacity, being conducting a field interview." The term "field interview" falls within the authorized act described in section 107-14.

¶ 20 We are not persuaded by defendant's reliance on *People v. Hilgenberg*, 223 Ill. App. 3d 286 (1991). There, the complaint, which was found to be insufficient, alleged that the defendants refused to open the door to a home for a police investigation. *Hilgenberg*, 223 Ill. App. 3d at 287. *Hilgenberg* dealt with the particular Fourth Amendment concerns that arise when a police officer attempts to enter someone's home (*Id.* at 293), rather than the street encounter that was at issue here.

¶ 21 Defendant next contends the evidence was insufficient to prove that he obstructed the officers. During his brief, approximately 50-second long encounter with Officer Pucillo and Officer Hughes, defendant did not threaten the officers, only came within three feet of one of the officers, and merely stated he wanted a commander and that he was being harassed. Defendant claims he was complaining about the treatment he was receiving. In addition, defendant

contends that the State failed to prove that the officers were engaged in an authorized act. According to defendant, because there was no testimony showing that the officers had reasonable suspicion to detain anyone outside the convenience store, the detentions were illegal.

¶ 22 When a defendant challenges the sufficiency of the evidence, "the relevant question 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." (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). It is not our function to retry the defendant. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). In a bench trial, the trial judge, sitting as the trier of fact, determines the credibility of witnesses, weighs and draws reasonable inferences from the evidence, and resolves any conflicts in the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Testimony may be found insufficient only where the evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). Where two conflicting hypotheses are supported by the evidence and the trier of fact makes its decision between the two, it is improper for the reviewing court to disturb that determination. *People v. Szundy*, 262 Ill. App. 3d 695, 714-15 (1994). A defendant's conviction will not be reversed unless the evidence is so unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt of the defendant's guilt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 23 To sustain a conviction for obstructing a peace officer, the State must prove that the defendant knowingly obstructed 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). As noted above, obstruction has been defined as conduct that interposes an obstacle that impedes or hinders the officer in the performance of his authorized duties. *Baskerville*, 2012 IL 111056 at ¶ 23. Whether conduct is an obstruction is an inquiry for the trier of fact, based on the facts and

circumstances of each case. *Id.* Verbal resistance or argument alone, even the use of abusive language, is not obstruction. *People v. Berardi*, 407 Ill. App. 3d 575, 582 (2011).

¶ 24 Here, the evidence sufficiently supports the trial court's finding that defendant obstructed Officer Hughes. When defendant's encounter with Officer Grobla was over, defendant approached Officer Hughes and Officer Pucillo, who were in the midst of conducting protective pat-downs of two other individuals, yelled for a commander in a loud and boisterous manner, and refused to leave. Defendant came within three feet of Officer Pucillo's gun side, which Officer Hughes characterized as "dangerously close." Officer Hughes testified that he had to continuously stop his field interview to make sure defendant did not try to disarm Officer Pucillo. Defendant only left when he was told he was in custody. Although Officer Hughes left the two detained individuals shortly after defendant left the scene, he testified that the field interview was not complete at that point, and the investigation continued. Defendant's actions delayed the pat-down and investigation, thus hindering the officers' performance. Our conclusion is consistent with *Gordon*, 408 Ill. App. 3d at 1017, where the defendant obstructed an investigation following a traffic stop by standing in between two vehicles, yelling profanities and threatening officers, and refusing to leave despite being told to do so 5 to 15 times, and *Synnott*, 349 Ill. App. 3d at 224, 229, where the defendant obstructed a traffic stop by refusing to exit his car after being told to do so four times, and grabbing his steering wheel, before ultimately complying. We also note that any behavior that actually threatens an officer's safety or even places an officer in fear for his safety is a significant impediment to the performance of his duties. *Synnott*, 349 Ill. App. 3d at 228. As in *Gordon* and *Synnott*, here, defendant's loud and boisterous yelling and refusals to leave impeded the officers' ability to carry out their task.

¶ 25 Defendant's conduct cannot be characterized as a mere challenge to the validity of the officers' conduct, and we are not persuaded by defendant's reliance on *People v. Berardi*, 407 Ill. App. 3d 575 (2011). There, the defendant repeatedly asserted his right to be present in a city office based on his status as an alderman, and almost immediately acquiesced to a peace officer's

authority, leading to the conclusion that the defendant was merely disputing the peace officer's authority under the circumstances. *Berardi*, 407 Ill. App. 3d at 580, 582. In contrast, here, defendant approached the officers to impede their field interview. Defendant's own encounter with the police was complete, and yet he approached Officer Hughes and Officer Pucillo nonetheless, and conducted himself in a loud and boisterous manner. Moreover, defendant did not simply verbally dispute the officers' authority, but approached Officer Pucillo's gun side in a way that made the officers feel unsafe. We recognize there is a conflict in the evidence regarding whether defendant was led to Officer Hughes and Officer Pucillo or approached on his own accord, but it is for the trier of fact to resolve this conflict, and further, we will not substitute our judgment for that of the trier of fact on questions involving the weight to be assigned the evidence or the credibility of witnesses. *People v. Baugh*, 358 Ill. App. 3d 718, 736-37 (2005). Viewing the evidence in the light most favorable to the State, the evidence that defendant obstructed Officer Hughes is not so unreasonable, unsatisfactory, or improbable that it raises a reasonable doubt of defendant's guilt.

¶ 26 The evidence was also sufficient to find that Officer Hughes was conducting an authorized act. A police officer may briefly stop a person for temporary questioning if the officer reasonably believes that the person has committed, or is about to commit, a crime. *People v. Thomas*, 198 Ill. 2d 103, 109 (2001) (citing *Terry v. Ohio*, 392 U.S. 1, 22 (1968)). For the protection of himself and others, the officer may also conduct a carefully limited search of the person's outer clothing to discover weapons that could be used to assault him. *Terry*, 392 U.S. at 30. The *Terry* standards have been codified in section 107-14 of the Code of Criminal Procedure of 1963, which states that a peace officer may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit, or has committed an offense. 725 ILCS 5/107-14 (West 2010). In determining whether an officer acted reasonably in the circumstances, courts must give due weight not to an inchoate or unparticularized suspicion, but to specific reasonable

inferences which the officer may draw from the facts in light of his experience. *Terry*, 392 U.S. at 27. Here, the officers reasonably inferred that criminal activity was afoot outside the convenience store and conducted a *Terry* stop accordingly. The officers saw two individuals outside the store, and knew from past experience that those individuals sold drugs there. After the two individuals looked in the officers' direction, the individuals went inside the store, and based on their experience, the officers believed such behavior was indicative of possible narcotics activity. Accordingly, the officers detained the two individuals for a field interview and protective pat-down.

¶ 27 Furthermore, defendant cannot challenge the validity of Officer Hughes's field interview of the other two individuals. The fourth amendment protects people, not places (*People v. Rosenberg*, 213 Ill. 2d 69, 77 (2004)), and defendant cannot complain about the violation of another's constitutional rights, as fourth amendment rights are personal rights that may not be asserted vicariously (*People v. Martinez*, 307 Ill. App. 3d 368, 374 (1999)). Defendant does not have standing to contest whether Officer Hughes's field interview of the two other individuals was an authorized act.

¶ 28 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 29 Affirmed.