SIXTH DIVISION
October 16, 2015

No. 1-14-0838

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 187480
	)	
JUNAID VORAJEE,	)	Honorable
	)	Sandra G. Ramos,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Rochford and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 ***Held:*** The evidence was sufficient to convict defendant of obstruction of a peace officer and reckless conduct beyond a reasonable doubt because he immediately returned to a standoff between police and another man, despite being ordered to leave by a police officer. However, we vacate defendant's reckless conduct conviction on one-act, one-crime principles.

¶ 2 Following a bench trial, defendant Junaid Vorajee was found guilty of obstruction of a peace officer and reckless conduct, and sentenced to concurrent sentences of one year of conditional discharge and community service on each charge. On appeal, defendant contends that the State failed to present sufficient evidence to prove him guilty of obstruction of a peace

officer beyond a reasonable doubt because there was no evidence that he actually impeded officers or knew his conduct was certain to do so. He also argues that the State failed to prove him guilty of reckless conduct because there was no evidence that defendant's actions were reckless or endangered others. Finally, he argues that his reckless conduct conviction must be vacated under one-act, one-crime principles, citing *People v. Artis*, 232 Ill. 2d 156 (2009). We affirm in part and vacate in part.

¶ 3 Defendant was charged by information with one count of obstruction of a peace officer and one count of reckless conduct, both misdemeanors. The obstruction of a peace officer complaint, as amended in court, alleges that defendant:

> "knowingly obstructed the performance by one known to the person to be a peace officer within the officer's official capacity and engagement in the execution of his/her official duties, in that the defendant refused to leave a police scene where the probability of deadly force was immeinent [sic] and dangerous for defendant."

¶ 4 At trial, Chicago police officer Richard Johnson testified that he and his partner, Officer Lindgren,[1] received a call indicating that a man was trying to break a gas station's window on the night of December 30, 2012. When the uniformed officers arrived at the gas station, they found an "agitated man" holding a piece of concrete in his hands. The officers urged the man to put the concrete down, but he threatened to use it against them. Johnson called for backup. As they waited for assistance, Johnson and Lindgren tried to clear the area of four or five bystanders "to make sure nobody else was in the middle of all this." While most of the other people left on

[1] The report of proceedings refers to an Officer "Lenegren," but indicates that this spelling is a phonetic approximation. Defendant's brief and electronically-generated documents in the common law record refer to an officer named "Lindgren." We will use the latter spelling.

their own, Johnson saw defendant, whom he identified in court, sitting in a car's passenger seat video-recording the scene on his phone. The car was about seven feet away from the man with the concrete. Lindgren approached the car and ordered defendant and the driver to leave. At that time, the agitated man had drawn within three feet of the car. He was threatening to use "a brick against the police and anyone that would come near him." Johnson testified that the officers needed defendant to leave so that they could "contain the situation" without interference. Shortly after defendant left, Johnson's sergeant arrived at the gas station. The two officers and the sergeant began to discuss how to take the agitated man into custody. While they spoke, the man was about fifteen feet away from them. As the officers discussed "a plan of action," defendant walked towards them. Johnson noticed that the car defendant had left in was parked across the street. Defendant demanded to speak to the sergeant. Johnson told defendant that it was "a volatile situation, that he had no business being on the scene." He immediately arrested defendant.

¶ 5 On cross-examination, Johnson testified that approximately four other officers had arrived while he talked with Lindgren and the sergeant, and they were watching the agitated man during the discussion. He also testified that defendant had returned to the scene about five minutes after leaving. During the cross-examination, defendant published the video taken by his cell phone to the trial court. This video is not included in the record on appeal.

¶ 6 Following the close of the State's case-in-chief, defendant testified that he was at a gas station with his friend Dominic Sanders on the night of his arrest.[2] Sanders was driving and had stopped to fill up the car. When defendant went into the station's store, he noticed a man in front

[2] The record indicates that in the direct examinations of defendant and Sanders, defense counsel referred to the night in question as December 3, 2012. The charging instruments and Officer Johnson's testimony, as well as defendant's appellate brief indicate that the date was December 30, 2012.

of the station "saying some profane language acting a little different than usual." Defendant returned to the car's passenger seat. He used his cell phone to begin recording the man because he "was reacting a little aggressively." At the time, a female police officer was talking to the agitated man. At trial, defendant testified that he believed the officer was Lindgren. Lindgren turned around and ran towards the car. She told defendant to give her his phone and struck him as he tried to put the window up. She told him that she would break the window and "constantly" tried to take his phone. Defendant repeatedly told her that they were going to get a "CR," or complaint registry, against her. When Lindgren told them to leave, defendant said "Okay, okay, but I am not the driver." He then told Sanders, "Let's go." Sanders drove away and circled the block. As they passed the gas station, defendant noticed a police sergeant. He told Sanders to park so that he could complain to the sergeant about Lindgren's behavior. After Sanders parked the car across the street, defendant got out and approached the sergeant who was standing alone at the time. When defendant asked to speak with him, the sergeant turned around and replied, "Yes." Lindgren then started running towards defendant from about 20 feet away, "being very aggressive." She told the sergeant, "That's him. That's him. He was recording." She "put[] her hands all over" defendant. One of the officers took his phone. Lindgren said, "How about you go to jail," and handcuffed defendant.

¶ 7 Dominic Sanders testified that she and defendant had stopped at a gas station on the night defendant was arrested. As they arrived, they noticed a man outside "talking crazy" to the station's security guard. After entering the station to pay, defendant returned and began to pump the gas. Once he had finished, defendant began to record the man. A police officer then walked up and told defendant and Sanders to "f-in go." As she walked up, she grabbed defendant's hand and phone and reached into the car. She told them to "get the 'f' out of here, before I break your

'f-in' window." They left, and Sanders drove around the block. She pulled over once they returned to the gas station so that defendant could get out and talk to the "white shirt." On cross-examination, Sanders testified that the agitated man picked up a brick and told the police that "he was going to break them." He called the officers "pigs." She also testified that defendant had seen the "white shirt" before they left the station, and told her to "go back around."

¶ 8 The trial court found defendant guilty of both charges. Defendant appeals.

¶ 9 We initially note that the record on appeal is incomplete, as the video recording and exhibits defendant presented at trial are not included in the record before us. Because defendant, as appellant, bears the burden of providing a complete record on appeal, we must resolve any doubts arising from the missing video recording and exhibits against him. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 10 We also note that defendant's opening brief appeared to challenge the sufficiency of the information that charged defendant with obstruction of a peace officer. However, in his reply brief, defendant makes clear that he challenges only the sufficiency of the evidence produced at trial and his two convictions based upon a single act. Consequently, we limit our analysis to those named issues.

¶ 11 Defendant first contends that the State failed to produce sufficient evidence to prove him guilty beyond a reasonable doubt of obstruction of a police officer. He argues that the State failed to prove that he refused to leave the area because he left when Lindgren ordered him to, and was arrested immediately upon his return. He also argues that the State provided no evidence that he knew that his actions would obstruct the officers' actions and no evidence that his conduct actually obstructed officers.

¶ 12 The State responds that the evidence presented at trial proved beyond a reasonable doubt that defendant disobeyed the officers' orders to leave and thus obstructed their attempts to quell the dangerous situation involving the agitated man armed with a piece of concrete. It asserts that defendant remained for sometime after being ordered to leave and that he returned almost immediately.

¶ 13 Due process requires the State to prove each element of a criminal offense beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004), citing *In re Winship*, 397 U.S. 358, 364 (1970). When reviewing the sufficiency of evidence, a reviewing court must decide "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.) *Jackson v. Virginia*, 443 U.S. 307, 313 (1979); see also *Cunningham*, 212 Ill. 2d at 278. A reviewing court will not overturn a guilty verdict unless the evidence is "so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005). On appeal, the reviewing court must resolve all reasonable inferences in favor of the prosecution. *Cunningham*, 212 Ill. 2d at 280. The positive and credible testimony of a single witness is sufficient to support a criminal conviction. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). This court may not retry a defendant on appeal. *People v. Milka*, 211 Ill. 2d 150, 178 (2004).

¶ 14 To sustain a conviction for obstructing a peace officer, the State must prove that the defendant (1) knowingly obstructed the performance (2) by one known to the defendant to be a peace officer (3) of any authorized act within his official capacity. 720 ILCS 5/31-1(a) (West 2012); see also *People v. Baskerville*, 2012 IL 111056, ¶ 32.

¶ 15 There is no dispute that defendant knew he was interacting with police officers. Officer Johnson testified that the officers were in uniform. Defendant's own testimony indicated that he wished to register a complaint against Lindgren as a police officer. Defendant does not argue that the officers were not authorized to confront the threat to public safety created by the agitated man. Johnson testified that the agitated man had threatened both the officers and bystanders with a concrete brick and stated that the officers were trying to develop an action plan when defendant approached them and demanded to speak to the sergeant. Thus the pertinent question before the court is whether defendant performed an act that obstructed the officers' attempts to quell the situation and whether he did so knowingly.

¶ 16 Obstruction has been defined as conduct that places an obstacle that "impedes or hinders" the officer in the performance of his or her authorized duties. *Baskerville*, 2012 IL 111056, ¶ 23. The conduct must "actually impede[]" an officer's authorized action. *Id.*, ¶ 35. However, "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" and therefore obstructs the officer's performance of his or her duties. *People v. Synnott*, 349 Ill. App. 3d 223, 228 (2004). Whether conduct constitutes an obstruction is an inquiry for the fact-finder, based on the circumstances of each case. *Baskerville*, 2012 IL 111056, ¶ 23. Verbal resistance or argument alone is not obstruction. *People v. Berardi*, 407 Ill. App. 3d 575, 582 (2011). However, the refusal to disperse once ordered to do so may constitute an act of obstruction. See *People v. Gordon*, 408 Ill. App. 3d 1009, 1017 (2011) (finding defendant's yelling of profanities and refusal to leave after 5 to 15 police orders directing him to do so supported obstruction of a peace officer conviction); see also *Synnott*, 349 Ill. App. 3d at 227 ("[M]erely refusing a police officer's lawful order to move can constitute interference with the officer in the discharge of his or her duty.")

¶ 17 Johnson testified that he and Lindgren attempted to clear the gas station of bystanders because of the danger posed by the man with the concrete brick. While defendant initially left the scene at Lindgren's direction, Johnson saw that he was back at the gas station and out of the car in less than five minutes. The testimony of defendant and Sanders made it clear that their departure was momentary and fleeting. Both said that they merely drove around the block before returning. Sanders testified further that defendant had seen a sergeant and planned to return to the gas station even before they had left it. Taking the evidence in the light most favorable to the State, the trial court could reasonably find beyond a reasonable doubt that defendant had refused to comply with Officer Lindgren's order to leave by returning immediately and demanding the sergeant's attention even before the dangerous situation had abated. While defendant characterizes his actions as "acquiescence" to the officer's order and then a separate action of returning to the scene, this distinction is merely semantic. The trial court could reasonably conclude that defendant's brief departure and immediate return once Officer Lindgren was no longer interacting with him was in effect a refusal to disperse.

¶ 18 The evidence also supports a finding that defendant's refusal impeded the officers' performance of their duties. Both Johnson and Sanders testified that the man with the concrete brick was threatening people. Johnson stated that the officers were trying to come up with a plan to deal with the man for public safety purposes. They were only fifteen feet from this individual when defendant approached and demanded their attention. This court has previously noted how a citizen's unwarranted presence in a dangerous situation "substantially increase[es] the physical danger to both the officer and the civilian." *Synnott*, 349 Ill. App. 3d at 228. Furthermore, defendant was not merely present in a dangerous situation. When he approached the officers, he demanded to speak with the sergeant, actively taking the officers' time and attention from the

armed man, preventing them from attending to that situation until they had removed defendant from the scene, and increasing the level of danger for all concerned. Given these facts, the trial court could reasonably find beyond a reasonable doubt that defendant obstructed the officers in their handling of the situation.

¶ 19 Defendant argues that because four other officers were present at the scene, the trial court could not reasonably conclude that his interactions with the two officers and the sergeant constituted an obstruction. This argument is unpersuasive. The record does not reflect that the other officers had brought the situation under control, or that they rendered the three officers who defendant did engage superfluous. Defendant came within fifteen feet of a violent, armed man and forced police officers to focus on him, rather than the dangerous situation at hand. The trial could reasonably determine that this created an impediment to the officers' performance of their duties.

¶ 20 The required mental state to obstruct a peace officer under the statute at issue is that defendant must knowingly obstruct a peace officer. 720 ILCS 5/31-1(a) (West 2012). An individual acts knowingly when he is consciously aware that a result is practically certain to be caused by his conduct. 720 ILCS 5/4-5(b) (West 2012). Mental state may be inferred from circumstantial evidence, and such inferences are matters particularly within the province of the fact-finder. *People v. Lemke*, 384 Ill. App. 3d 437, 445-46 (2008).

¶ 21 Ample circumstantial evidence supports the trial court's finding that defendant knowingly obstructed the officers. All three witnesses recognized the obvious danger posed by the agitated man with a concrete brick. Defendant himself noted that he began recording the man because he was acting "aggressively." Other bystanders voluntarily left the gas station because of the danger. Furthermore, defendant was told by Lindgren that he needed to leave the

scene. Johnson testified that he, Lindgren, and the sergeant were huddled together trying to devise an action plan. Regardless, defendant immediately returned and approached officers trying to contain the dangerous situation. Given the clear danger and the direct order that defendant needed to leave the area and taking the evidence in the light most favorable to the State, the trial court could reasonably infer beyond a reasonable doubt that defendant knew to a practical certainty that his actions could place himself or the officers in further danger or otherwise obstruct their handling of the situation. Therefore, we find the State presented sufficient evidence to prove defendant guilty of obstruction of a peace officer beyond a reasonable doubt.

¶ 22 Defendant also contends that the State failed to prove him guilty of reckless conduct beyond a reasonable doubt. In order to sustain a conviction for reckless conduct as charged, the State must prove that the defendant (1) recklessly (2) performed an act that endangered the safety of another person. 720 ILCS 5/12-5(a) (West 2012). A person acts recklessly when "that person consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, *** and that disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation." 720 ILCS 5/4-6 (West 2012). For the reasons already discussed above, we find that a rational fact-finder could find beyond a reasonable doubt that defendant's demand to speak with the sergeant in the midst of a situation involving a deranged man with a deadly weapon endangered the safety of the officers, that defendant consciously disregarded the substantial risk of endangerment, and that his disregard was a gross deviation from the standard of reasonable care. We therefore find that the State proved defendant guilty of reckless conduct beyond a reasonable doubt.

¶ 23 Next, defendant contends that his convictions for obstruction of a peace officer and for reckless conduct are predicated on the same action and thus violate one-act, one-crime principles. The State concedes that both convictions are based upon the same act of refusal, and that defendant's reckless conduct conviction should be vacated. We accept the State's concession. The one-act, one-crime principle prohibits multiple convictions when they are carved from a single physical act. *People v. Rodriguez*, 169 Ill. 2d 183, 186 (1996), citing *People v. King*, 66 Ill. 2d 551, 566 (1977). When two convictions originate from the same physical act, the less serious conviction must be vacated. *People v. Lee*, 213 Ill. 2d 218, 226-27 (2004). We agree with the parties that reckless conduct is the less serious charge. See *People v. Johnson*, 237 Ill. 2d 81, 98-99 (2010) (where convictions share the same sentencing class, court looks to the mental state required for each offense). Accordingly, we vacate defendant's conviction for reckless conduct, but do not remand for resentencing because the trial court imposed identical concurrent sentences on each conviction.

¶ 24 Finally, defendant contends that his video recording of the melee was protected under the first amendment to the United States constitution. He first relies on *People v. Melongo*, 2014 IL 114852, in which our supreme court struck down a statute criminalizing eavesdropping on the basis that it infringed on first amendment rights and was constitutionally overbroad. He also relies on cases such as *Glik v. Cunniffe*, 655 F. 3d 78, 83 (1st Cir. 2011), in which the court considered the constitutional protections involved when individuals record the acts of police officers. Relying on numerous prior decisions upholding the right to record the actions of police officers and other public officials in public areas, the *Glik* court noted that "[t]he filming of government officials engaged in their duties in a public place, including police officers performing their responsibilities, fits comfortably within [first amendment] principles." *Id.* at 82.

However, the *Glik* court stated: "To be sure, the right to film is not without limitations. It may be subject to reasonable time, place, and manner restrictions." *Id*. at 84. On that same theme, Judge Posner has recognized there are times when a conversation with a police officer in a public area might need to remain private to ensure candor and accuracy regarding the information provided. *ACLU v. Alvarez*, 679 F. 3d 583, 614 (7th Cir. 2012) (Posner, J., dissenting) ("the people who most need police assistance and who most want their conversations kept private are often the people least able to delay their conversation until they reach a private place").

¶ 25 Accordingly, the cases relied on by defendant are distinguishable. The defendants in *Melongo* and *Glik* were prosecuted simply for the bare act of making a recording. In fact, the complaint in *Glik* alleged that Glik filmed officers subduing a suspect "at a comfortable remove" and "neither spoke to nor molested them in any way." *Glik*, 655 F. 3d at 84. In contrast, the evidence here showed that Voragee violated an officer's order to move away from the immediate vicinity of officers who were trying to quell an intense and emergent situation which was dangerous to themselves, to the defendant, to bystanders, and to the perpetrator himself. He was charged and tried on that basis. Accordingly, we cannot discern a valid basis on which to overturn his conviction on first amendment principles.

¶ 26 The State sufficiently proved defendant guilty of obstruction of a peace officer and reckless conduct beyond a reasonable doubt. However, we vacate his reckless conduct conviction under one-act, one-crime principles. Accordingly, the judgment of the circuit court of Cook County is affirmed in part and vacated in part.

¶ 27 Affirmed in part; vacated in part.