No. 2—09—0148
Order filed January 25, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 08—CM—4471
DESHAE D. COLEMAN-ROGERS,	)	Honorable Veronica M. O'Malley,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

Held: The State proved defendant guilty beyond a reasonable doubt of resisting a peace officer (by resisting being handcuffed); although defendant was submissive when she was ultimately handcuffed, her prior struggling prevented the officers from retrieving their handcuffs and attempting to handcuff her earlier than when it actually occurred.

ORDER

Following a jury trial, defendant, Deshae D. Coleman-Rogers, was convicted of resisting a peace officer (720 ILCS 5/31—(a) (West 2008)) and sentenced to probation. She appeals, contending that the State failed to prove beyond a reasonable doubt that, as charged, she resisted being handcuffed. Defendant contends that the evidence showed that she was compliant by the time the officer attempted to handcuff her. We affirm.

An information charged defendant with resisting a peace officer "in that the defendant physically struggled against being handcuffed." The cause proceeded to a jury trial at which the following evidence was adduced.

Late in the evening of July 12, 2008, Millie Hill was working at a McDonald's in Waukegan. A festival called Scoop the Loop was going on and "tens of thousands" of people were out and about. Hill saw a group of young people walking toward her. One of them appeared to have a gun, which was then handed to another person in the group. Hill reported to a nearby police officer what she had seen.

Officer Timothy McGurn was on bicycle patrol that night. After speaking to Hill, he set out in search of a person with a gun. He called Officer John Spiewak and told him that someone might have a gun. McGurn then saw defendant grab something in her front waistband, adjust it, and pull her shirt over it.

McGurn approached defendant and said, "Come here." She looked at him and started walking backward. McGurn grabbed defendant, who shoved him in the chest and started wildly swinging her arm. Spiewak intervened, grabbing defendant by the arm, and the officers tackled her. Spiewak tasered defendant. McGurn then handcuffed defendant and retrieved a .177-caliber BB gun from her waistband.

Spiewak largely corroborated McGurn's testimony. As McGurn grabbed defendant, she pushed away. Spiewak then grabbed her by the arm and told her to stop moving. Defendant started wildly shaking her arms and spinning around before dropping to the ground. When defendant was on her back, Spiewak saw a gun in her waistband. Spiewak tasered defendant and McGurn placed

her in handcuffs. Spiewak testified that defendant "was very easy to place into handcuffs" after being tasered.

Defendant testified that she was 17 years old on July 12, 2008. As she was walking in a large group, someone passed her an empty BB gun, which she put in her waistband. As she was crossing the street, she heard someone call for "Sarah." She kept walking, but someone came up from behind and grabbed her. Thinking it was a family member, she shrugged it off. The person then turned her around and slammed her onto the ground. She then realized that the person was a police officer. Two officers pinned her down, lifted her shirt, and tasered her twice.

The jury found defendant guilty of resisting, but not guilty of battery. The trial court sentenced her to one year of probation. Defendant appeals.

Defendant contends that the State did not prove that she resisted being handcuffed—as it alleged in the information—because the officers testified that when they placed the handcuffs on her, she was "compliant." In a criminal prosecution, the State must prove beyond a reasonable doubt each element of the offense charged. *In re Winship*, 397 U.S. 358, 361-64 (1970). Generally, when an appellant challenges the sufficiency of the evidence, the relevant question is whether, after viewing all the evidence in a light most favorable to the prosecution, a rational trier of fact could have found all the elements of the offense beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

A defendant is guilty of resisting if he or she "knowingly resists *** the performance by one known to the person to be a peace officer *** of any authorized act within his official capacity." 720 ILCS 5/31—(a) (West 2008). "Resist" means to "withstand[] the force or effect of." (Internal quotation marks omitted.) *People v. Hilgenberg*, 223 Ill. App. 3d 286, 289 (1991). "Obstruct"

means "to be or come in the way of." (Internal quotation marks omitted.) *Id.* The charging instrument must specifically allege the authorized act the officer was performing and the defendant's acts constituting resistance. *Id.* Defendant argues that, contrary to the information's allegations, she was not resisting when she was handcuffed.

Defendant's argument assumes that the requirement that the charging instrument allege the officer's authorized act converts the specific act into an element of the offense that the State must prove beyond a reasonable doubt. The cases defendant cites do not clearly explain whether the nature of the officer's authorized act becomes an element of the offense or is merely a pleading requirement. We need not definitively resolve the issue here because, even if the nature of the officer's authorized act was an element of the offense, the State provided sufficient proof of that element.

McGurn and Spiewak both testified that defendant struggled with them for some time. Certainly, McGurn formed the intent to arrest and handcuff defendant sometime during the struggle (if not before), but was unable to do so because she was struggling with him. McGurn's attempting to retrieve his handcuffs while struggling with defendant would have been futile and likely dangerous. Thus, he chose to wait until defendant had been subdued before placing the handcuffs on her. Nevertheless, defendant's continuing to struggle with the officers "resisted" or "obstructed" her being handcuffed. That the officers had not physically attempted to handcuff defendant while she was struggling did not alter this conclusion. We believe that, based upon the totality of the evidence, a rational trier of fact could have found beyond a reasonable doubt that on the date in question defendant resisted the officers' attempt to handcuff her.

The judgment of the circuit court of Lake County is affirmed.

Affirmed.