2017 IL App (2d) 140974-U
No. 2-14-0974
Order filed January 26, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JULIA WALSH, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 13-CM-2470 Honorable Brian Dean Shore, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction of obstructing a peace officer is reversed where the arresting officer's warrantless entry into defendant's bedroom violated the fourth amendment and was therefore not an authorized act. The State's alternative theory that the intrusion was justified by exigent circumstances is forfeited because it was not presented in any fashion in the trial court.

¶ 2 Following a jury trial, defendant, Julia Walsh, appeals her conviction of obstructing a peace officer (720 ILCS 5/31-1(a) (West 2012)), following a jury trial. On appeal, defendant argues: (1) the evidence presented was insufficient to prove her guilt because the act of closing her bedroom door was not an act of obstructing but was a limitation on her consent to search given to the officers entering her residence while she looked for her gun; and (2) she was denied

a fair trial where the trial court failed to properly question the prospective jurors whether they both understood and accepted the principles set forth in Illinois Supreme Court Rule 431(a) (eff. July 1, 2012). We reverse.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged in an amended information with one count of obstructing a peace officer (720 ILCS 5/31-1(a) (West 2012)). Specifically, the State alleged that:

> "defendant knowingly resisted the performance of Officer Hecker of an authorized act within his official capacity, being the search of the house for gun, knowing Officer Hecker to be a law enforcement agent engaged in the execution of his official duties, in that she closed a bedroom door on officers after being instructed to leave the door open."

The matter advanced to trial.

¶ 5 On July 29, 2013, defendant was the subject of a traffic stop in front of her home. The vehicle defendant was driving belonged to her long-term boyfriend, Phillip Speracino. The vehicle had no front registration plate and there was no registration on file with the Secretary of State for the rear plate.

¶ 6 Sergeant Douglas Allton of the City of Loves Park police department testified that defendant told him the paperwork for the car may have been in her house. Allton asked defendant if Speracino was in the house, and she replied that he was not. Defendant went inside to look for the registration paperwork. She returned to Allton a few minutes later, saying that she could not find the paperwork. Defendant then used her cell phone to call the facility where she purchased the registration.

¶ 7 While defendant was making the call, Officers Joshua Hecker and Eric Jacobson of the City of Loves Park police department, among others, arrived at the scene of the traffic stop. All

of the officers present were dressed in police uniform, and all were driving marked squad cars.

¶ 8 Hecker testified that he had been at the police station, interviewing the victim of an alleged aggravated assault involving Speracino. Hecker heard the communication over the radio that defendant had been stopped in front of her residence. Hecker was aware that defendant and Speracino were involved in a boyfriend-girlfriend relationship, so he proceeded to defendant's residence.

¶ 9 When Hecker arrived, he asked if defendant knew Speracino's whereabouts. Defendant told Hecker that she was just returning from dropping off Speracino at a job site in Rockford. Hecker then asked defendant whether she owned a gun. Defendant replied that she did own a gun, and she also possessed a valid firearm owner's identification (FOID) card. Hecker explained to defendant that he was investigating an alleged aggravated assault involving Speracino and a "black semi-automatic handgun." Hecker testified that he asked defendant if he could see her handgun to determine if it was possibly the gun used in the crime he was investigating. Hecker testified that defendant agreed and "informed [Hecker] that she would go in and retrieve it." Hecker testified that he then asked her if he "could come in as well," explaining that it was "for officer safety reasons." Hecker elaborated:

> "Typically, when a weapon is involved, um, we want to make sure we have the person that's going to retrieve this weapon in our sights at all times. So they don't have a chance to come out and, and [*sic*] assault us or, or [*sic*] shoot at us if, if [*sic*] they're given the chance. That's why we go in."

¶ 10 Hecker testified that defendant allowed him into her house, and she then walked to a bedroom and approached a closed door. Hecker "once again" asked defendant "to keep the door open so that [he] could keep her in [his] sights for officer safety reasons." Hecker testified that

defendant proceeded to enter the bedroom and "shut the door." Hecker testified that defendant advised him that she shut the door "because her daughter was possibly undressed [and] asleep" in the bedroom and defendant "needed to get her [daughter] dressed." Hecker testified that he asked defendant several times to open the door, but she kept it shut. Hecker testified that he tried to see through the hole for the missing doorknob, but because the room was darkened, he was unable to see inside the bedroom. Hecker testified that he was beginning to get nervous about what was going on in the room because of the possibility that the gun could be turned on him and his fellow officers.

¶ 11 At this point, Hecker determined to enter the bedroom. Hecker testified that, as he was entering the bedroom, he heard Jacobson announce over the radio that he had taken Speracino into custody just outside defendant's residence. Hecker testified that, once inside the bedroom, he observed defendant and her daughter in the room with the handgun resting on the bed; defendant's daughter was fully dressed. Hecker noted that, at no time after he followed defendant into her residence, did she tell him to leave the house.

¶ 12 Defendant was arrested and given *Miranda* warnings. During questioning, defendant asserted that she had no knowledge of the assault the police were investigating. Defendant admitted that she knew Speracino was inside her residence when Allton stopped her. Defendant also admitted that she knew that Speracino was in the bedroom and that she closed the door "to conceal [Speracino]."[1] Hecker again reiterated that defendant never told him "to leave the

[1] Defendant was originally charged with obstruction of a peace officer in that she knowingly obstructed the arrest of Speracino by refusing to open a door for officers to arrest him. This charge was dismissed before the trial.

house."

¶ 13 On cross-examination, Hecker agreed that defendant was cooperative and that "it wasn't until she got to the bedroom that she stopped complying." Hecker acknowledged that when he went to defendant's home, it was to investigate Speracino. Hecker further acknowledged that he did not have a search warrant or an arrest warrant for Speracino.

¶ 14 Allton testified that he entered the residence along with Hecker. Jacobson remained outside defendant's residence in case Speracino tried "to flee the residence." Allton further explained that Jacobson's position outside the house was "more than anything for our safety." Once inside, Allton was monitoring the surroundings while Hecker dealt with defendant. Allton heard defendant explain to Hecker why she was closing the door to the bedroom. He heard Hecker "tapping on the door," but he did not catch the words Hecker was using. While defendant was still in the bedroom, Allton heard Jacobson's announcement over the radio that Speracino had been taken into custody outside the home.

¶ 15 On cross-examination, Allton acknowledged that defendant permitted the officers to enter her home. Allton acknowledged that defendant produced her handgun along with her FOID card.

¶ 16 Jacobson testified that, when he arrived at defendant's residence, he was tasked with watching the perimeter of the home, which is common practice for his police department. Jacobson testified that, while watching the perimeter, he saw Speracino walk around the side of the home. Jacobson took Speracino into custody, and he announced that fact over the police radio so the other officers at the scene would know.

¶ 17 The parties rested. Defendant's motion for a directed verdict was denied, with the trial court expressing doubt over the wisdom of allowing the subject of a search simply to disobey the

instructions of the police, notwithstanding defendant's contention that she was expressing a limitation of her consent and not disobeying the officers.

¶ 18 In closing argument, the State emphasized that defendant consented to the search, and that she did not comply with Hecker's demand, stemming from concern for officer safety, to leave the door open or to open it. Defendant argued that closing the bedroom door was an overt act demonstrating that she had withdrawn her consent for the officers to search her bedroom. Defendant also noted that Hecker requested the door be left open rather than ordering her to leave it open. The State did not suggest in any of its arguments that the officers were reacting to exigent circumstances that would have somehow made their search reasonable.

¶ 19 Following the parties' arguments, the trial court instructed the jury. Notably, while the jury was instructed about the offense of obstructing a peace officer, the trial court did not instruct the jury about consent. Additionally, the trial court did not instruct the jury regarding exigent circumstances and their effects on how the jury should view the evidence.

¶ 20 The jury found defendant guilty of obstructing a peace officer. Defendant filed a motion for judgment notwithstanding the verdict or in the alternative for a new trial. The trial court denied defendant's posttrial motion. Defendant was sentenced to a 12-month period of conditional discharge, including the requirement to complete 100 hours of community service, and she was assessed various fines and fees. Defendant timely appeals.

¶ 21 II. ANALYSIS

¶ 22 On appeal, defendant argues that the evidence was insufficient to establish beyond a reasonable doubt that she was guilty of the offense of obstructing a peace officer. Defendant additionally argues that the trial court's failure to ask potential jurors whether they understood

the principles set forth in Supreme Court Rule 431(b) deprived her of a fair trial. Because the sufficiency challenge is dispositive, we first consider this issue.

¶ 23 Defendant argues that the evidence was insufficient to prove her guilty beyond a reasonable doubt of obstructing a peace officer because her conduct in closing the bedroom door was not an act of obstructing, but was actually only a limitation on the consent she had given. Defendant also argues that, since Hecker's attempt to follow her into the bedroom was not authorized, Hecker was not engaged in any official act. Alternatively, defendant argues that, since her conduct did not actually interfere or impede the officers' search for the handgun, her conduct cannot constitute obstructing a peace officer.

¶ 24 When a defendant challenges the sufficiency of the evidence, the relevant inquiry is whether, viewing all of the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 214 Ill. 2d 206, 217 (2005). This standard of review applies to all evidence, both direct and circumstantial, and it applies to both bench and jury trials. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000). We will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant's guilt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Although we must allow all reasonable inferences from the record in favor of the State, we may not allow unreasonable or speculative inferences. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 25 In considering the arguments of the parties, we note that there are no disputed questions of fact. "The task before us is to determine how the relevant statutory terms and constitutional principles should apply to those uncontroverted facts. Where, as here, the question on appeal is limited to application of the law to undisputed facts, the standard of review is *de novo*." *City of*

Champaign v. Torres, 214 Ill. 2d 234, 241 (2005) (citing *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 523 (2001)).

¶ 26 Preliminarily, we note that, in a typical case, the fourth amendment is invoked before trial to bar the admission of physical materials acquired either during or as a direct result of an illegal search. In this case, the fourth amendment has been invoked at trial as a defense to the charge against defendant. Further, no motions litigating any issues stemming from the fourth amendment were filed or heard in the trial court.

¶ 27 Substantively, obstructing a peace officer is an offense which may be committed by a wide range of conduct; therefore, specific acts must be alleged. See *People v. Lutrell*, 134 Ill. App. 3d 328, 332 (1985) (citing *People v. Fox*, 117 Ill. App. 3d 1084, 1085 (1983)). In this case, the State alleged that:

> "defendant knowingly resisted the performance of Officer Hecker of an authorized act within his official capacity, being the search of the house for a gun, knowing Officer Hecker to be a law enforcement agent engaged in the execution of his official duties, in that she closed a bedroom door on officers after being instructed to leave the door open."

¶ 28 The issues in this case are the scope of defendant's consent and whether her actions would lead a reasonable person to believe that she withdrew or limited that consent by closing the door, explaining why she closed the door, and ignoring Hecker's requests to keep the door open. The State concedes in its brief that, "if the scope of consent to search was exceeded, then an officer's act would not be authorized." See *People v. Slaymaker*, 2015 IL App (2d) 130528, ¶ 12 (if a police officer's act was not authorized, then the defendant's conviction of obstructing a peace officer cannot stand). As we recently explained, where the authorized act alleged is an arrest, the inquiry usually ends because a defendant is not privileged to resist even an unlawful

arrest. *People v. Jones*, 2015 IL App (2d) 130387, ¶ 11 (citing *Torres*, 214 Ill. 2d at 241-42 (citing 720 ILCS 5/7-7 (West 2002))). However, where the officer's act in question is the entry into (or remaining within) the defendant's home, section 7-7 of the Criminal Code of 2012 (Criminal Code) (720 ILCS 5/7-7 (West 2012)) does not apply. "Thus, an officer's entry into the defendant's home in violation of the fourth amendment is not an 'authorized act' for purposes of section 31-1 [of the Criminal Code (720 ILCS 5/31-1 (West 2012))] (citation), even if the entry is undertaken pursuant to an official investigation (citation)." *Jones*, 2015 IL App (2d) 130387, ¶ 11. We must determine whether, under the uncontested facts of this case and the applicable principles, Hecker's entry into defendant's bedroom violated her fourth amendment right to privacy. "[W]here a police officer is not trying to make an arrest, section 31-1 [of the Criminal Code] would not prohibit a person from using reasonable force to prevent the officer from making an unconstitutional entry into his or her apartment." *Torres*, 214 Ill. 2d at 244.

¶ 29 The physical entry to the home is the chief evil against which the fourth amendment is directed. *Welsh v. Wisconsin*, 466 U.S. 740, 748 (1984); *People v. Wear*, 229 Ill. 2d 545, 562 (2008). A search or seizure inside a home is presumptively unreasonable. *Payton v. New York*, 445 U.S. 573, 586 (1982). This presumption of unreasonableness may be overcome by a showing that there was a voluntary consent to search, or there was a showing of probable cause and exigent circumstances that justify the intrusion. *People v. Dawn*, 2013 IL App (2d) 120025, ¶ 22. "Defendants have the right to place explicit limitations on the scope of their consent and have the right to withdraw consent once it is given." *People v. Prinzing*, 389 Ill. App. 3d 923, 937 (2009). "The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of 'objective' reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?" *Florida v. Jimeno*, 500

U.S. 248, 251 (1991); *People v. Ledesma*, 206 Ill. 2d 571, 593 (2003), *overruled on other grounds, People v. Pitman*, 211 Ill. 2d 502 (2004). Just as consent need not be conveyed through specific words, withdrawal of consent need not be effectuated through specific words; however, a person's intent to withdraw consent must be demonstrated by unequivocal acts, unequivocal statements, or some combination of both. *United States v. Sanders*, 424 F.3d 768, 774 (8th Cir. 2005); *United States v. Gray*, 369 F.3d 1024, 1026 (8th Cir. 2004). For example, in *Ledesma*, our supreme court noted that, although the police testimony was that the defendant "hem-hawed around," he never limited or withdrew his consent. *Ledesma*, 206 Ill. 2d at 595. Thus, in the absence of unequivocal acts or statements or both combined, we will not hesitate to find that the defendant has not withdrawn consent to the search.

¶ 30 After carefully examining the entirety of the exchange between Hecker and defendant, we conclude that a reasonable person would have understood that defendant consented to the officers' entry into her home while she retrieved the gun for them to examine. Because Hecker told defendant it was for "officer safety," a reasonable person would have understood that defendant consented to allowing the officers to be physically present when she produced the gun. That said, it is clear that defendant unambiguously placed a limit on that consent when she closed the door and explained that her daughter might have been undressed. Defendant's silence in the wake of Hecker's repeated requests to keep the door open only reinforced the message that Hecker was not welcome in the bedroom. Because defendant had effectively limited her consent, Hecker's entry into the bedroom to continue his search violated defendant's fourth amendment right to be free from an unreasonable search, and as such, was an unauthorized act. Because Hecker's act was unauthorized, his entry into the bedroom constituted an unreasonable search. Therefore, defendant's conviction for obstructing a peace officer must be reversed. See

Jones, 2015 IL App (2d) 130387, ¶ 12 (where the officer's act violates the fourth amendment, it is unauthorized, and an unauthorized act cannot support a conviction of obstructing a peace officer).

¶ 31 Because we have determined that defendant revoked or limited her consent to the officers' search with the result that Hecker's entry into the bedroom was an unauthorized act, we need not address defendant's alternative argument, that the act of closing the bedroom door did not interfere or impede the officers' search for the gun. Accordingly, we turn to the State's arguments.

¶ 32 The State argues that defendant's decision to close the bedroom door was not an objectively reasonable manifestation of her decision to limit her consent to search in her residence. We disagree. As we have noted, the scope of a subject's consent is viewed for its objective reasonableness. *Jimeno*, 500 U.S. at 251. Additionally, the law clearly allows a subject to limit his or her consent or to withdraw that consent entirely after it has been given. *Prinzing*, 389 Ill. App. 3d at 937. In our view, defendant consented to allow the officers inside her residence while she retrieved her handgun and FOID card. Once defendant arrived at her bedroom door, she revoked her consent by closing it. Hecker's testimony was that he *asked* defendant to keep the door open. When he was tapping on the door, Hecker reiterated that he *asked* defendant to open it. We see no other way to interpret defendant's initial closing of the door than as a revocation of consent to the search for the gun. Her continued refusal to accede to Hecker's *requests* to open the door constitutes an even clearer indication of the revocation of her consent to the search. Thus, defendant was not disobeying Hecker's instructions; rather, she was refusing to consent to his requests, as she was allowed to do. *Id.* Accordingly, the only

objectively reasonable construction of defendant's conduct is as a revocation or limitation of her consent previously granted. We reject the State's contention.

¶ 33 Next, the State argues for the first time on appeal that, even if defendant effectively limited her consent, Hecker "was still authorized to enter the bedroom to search for the handgun as he had probable cause and exigent circumstances." In her reply, defendant argues that this argument, namely, the existence of probable cause and the presence of exigent circumstances, was neither raised nor argued below. We agree.

¶ 34 In the trial court, the State made no attempt to justify Hecker's action on the grounds of exigent circumstances. We may not affirm a conviction on the basis of a theory that was not presented to the trier of fact. *Chiarella v. United States*, 445 U.S. 222, 236 (1980); see also *People v. Crespo*, 203 Ill. 2d 335, 345 (2001) (a defendant's right to understand the charges against him may be violated if a reviewing court countenances the State's argument even though it was never raised in the trial court).

¶ 35 In urging that we accept that exigent circumstances were present to justify Hecker's intrusion into defendant's bedroom, the State acknowledges that it bears the burden of demonstrating the existence of exigent circumstances. The State further acknowledges that, when the facts and the credibility of the witnesses are not in dispute, we may review *de novo* the issue of whether exigent circumstances were present. However, the State cites *People v. McNeal*, 175 Ill. 2d 335 (1997); and *People v. Johnson*, 368 Ill. App. 3d 1073 (2006), for the standards to be used in determining whether exigent circumstances were present. In these cases, the defendants filed motions to suppress, and the defendants and the State both were able to present arguments regarding the facts demonstrating the presence of exigent circumstances. Here, by contrast, the issue of exigent circumstances was never raised in a fashion to allow

defendant to address the purported facts supporting the existence of exigent circumstances, or to allow defendant to address any arguments the State may have sought to raise. Moreover, while the police in this case plainly undertook some precautionary measures associated with the voluntary retrieval of a handgun, the record is insufficiently developed to demonstrate the existence of exigent circumstances. For example, *Johnson* suggests that, among the factors to consider regarding the existence of exigent circumstances, whether the crime under investigation was recently committed is the first to be considered. *Johnson*, 368 Ill. App. 3d at 1083. Here, there was evidence that Hecker was investigating an alleged aggravated assault by interviewing the victim. There was no testimony, however, regarding when the victim was assaulted. We would have to speculate that the victim was assaulted shortly before defendant was pulled over, yet it is equally likely that the victim had been assaulted well before the incident at issue. In the absence of any information, we cannot resort to speculation, especially where defendant has not had the opportunity to develop the issue below. Accordingly, we reject the State's contention that Hecker's intrusion was justified by the existence of probable cause and exigent circumstances.

¶ 36 Last, the State argues that officer safety rendered Hecker's conduct of entering defendant's bedroom reasonable. In our view, the State's argument on this point does not actually advance a ground to support the trial court's judgment; rather, it counters defendant's argument that the short duration when her bedroom door was closed did not actually impede the officers' search. Defendant's primary point, that Hecker's action of entering the bedroom was not authorized after her consent had been revoked or limited, is not addressed in the State's argument. Instead, the State simply urges that, because officer safety was raised, the short duration of defendant's resistance to Hecker's search does not warrant the reversal of her

conviction. The State's talismanic reliance on "officer safety" does not substitute for coherent and affirmative argument to support the judgment. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Accordingly, we reject the State's contention disputing whether defendant's conduct impeded Hecker.

¶ 37 Because we reverse defendant's conviction due to the State's failure to prove that Hecker was performing an authorized act, we need not consider defendant's contention that she did not receive a fair trial when the trial court did not strictly comply with Supreme Court Rule 431(b).

¶ 38 In summary, then, because the officer was not performing an authorized act, there is insufficient evidence to support beyond a reasonable doubt all of the necessary elements of the offense of obstructing a peace officer. Accordingly, we reverse the judgment of the circuit court of Winnebago County.

¶ 39 III. CONCLUSION

¶ 40 For the foregoing reasons, the judgment of the circuit court of Winnebago County is reversed.

¶ 41 Reversed.