NO. 4-09-0583 Filed 01/07/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ANTHONY J. FITZGERALD, Defendant-Appellant.	)	Appeal from Circuit Court of Champaign County No. 09CM353
	)	Honorable John R. Kennedy, Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.

Justices Pope and McCullough concurred in the judgment.

ORDER

Held: The trial court did not err in finding defendant guilty of obstructing a peace officer beyond a reasonable doubt because sufficient evidence was presented to prove defendant committed a physical act designed to impede or delay his impending arrest.

On June 4, 2009, the trial court found defendant, Anthony J. Fitzgerald, guilty of obstructing a peace officer (720 ILCS 5/31-1(a) (West 2008)), a Class A misdemeanor. On July 30, 2009, the court sentenced defendant to 12 months' conditional discharge, ordered him to perform 100 hours of public service and to pay $100 in court costs, and imposed a violent-crime-victim-assistance-act fee, a $5 local anti-crime fee, and a $10-per-month conditional-discharge service fee. Defendant appeals, arguing the trial court erred in finding him guilty beyond a reasonable doubt.

We affirm.

I. BACKGROUND

On March 16, 2009, the State charged defendant with obstructing a peace officer. 720 ILCS 5/31-1(a) (West 2008). After a bench trial on June 4, 2009, defendant was found guilty.

At defendant's trial, Officer Chris Aikman testified as follows. On March 15, 2009, he was dispatched to 320 North Neil, Champaign, Illinois. He arrived in his marked squad car and was dressed in police uniform. Defendant was present at the premises when Officer Aikman arrived. Officer Aikman arrested defendant for disorderly conduct, put him in handcuffs, and walked him to the squad car. Although defendant voluntarily walked with Officer Aikman to the car, he loudly protested his arrest. When Officer Aikman asked defendant to get in the squad car, defendant continued protesting his arrest and made no move to enter the vehicle.

Officer Aikman again asked defendant to get in the car and attempted nudging defendant by placing his hand on defendant's shoulder and arm. However, Officer Aikman was unable to move defendant because defendant had leaned against the car. In accordance with police training, Officer Aikman tried striking defendant above his knee to cause defendant's leg to buckle. Officer Aikman testified it took him four or five times of

kneeing defendant before he could maneuver defendant into the car. Once defendant's leg buckled, Officer Aikman pushed defendant into the backseat of the vehicle and transported him to the county jail. Officer Aikman testified the whole episode lasted 15 to 20 seconds. During the struggle, defendant never informed Officer Aikman he was having trouble maintaining his balance and getting in the vehicle.

Defendant testified on March 15, 2009, he ran into his wife at Soma's. He attempted to discuss visitation of their son with her because they were in the process of getting a divorce. As defendant attempted to talk with his wife, her brother-in-law threw a drink at him. Defendant then exited Soma and flagged down a police officer in the parking lot to tell the officer his version of events. Defendant was placed under arrest for disorderly conduct and put into handcuffs.

As the officer walked defendant to the squad car, defendant verbally protested his arrest. After the officer opened the door of the car, defendant put his left leg over the kickplate of the car. Defendant testified he lost his balance when he leaned over to his right to ask the officer why he was being arrested. The officer then began the knee strikes to the outer quadrant of defendant's right leg. After more than five knee strikes, the officer took his left hand and pushed the right side of defendant's face toward the car. Defendant struggled to

maintain his balance because his hands were handcuffed behind his back. Defendant instinctively tried to readjust the position of his body to regain his balance.

Following closing arguments, the trial court found defendant guilty of obstructing a peace officer. The court found defendant engaged in physical acts designed to delay the process of being arrested. The court found defendant, knowing he was in the process of being arrested, tensed his body and braced himself against the doorway of the squad car for a sufficient period of time. Additionally, the court stated defendant's "knowing, volitional acts" of bracing himself against the vehicle caused Officer Aikman to initiate the leg strikes. The court found "a physical act [by defendant] which imposed an obstacle, which did, in fact, impede, hinder or at least *** delay the performance of an official duty." The court found defendant's physical act of resistance sufficient to constitute obstruction of a peace officer. On July 30, 2009, the trial court sentenced defendant as stated.

This appeal followed.

II. ANALYSIS

On appeal, defendant argues the trial court erred in finding him guilty of obstructing a peace officer because the State failed to prove beyond a reasonable doubt he knowingly committed a physical act designed to delay or impede his arrest.

When presented with a challenge to the sufficiency of evidence, the question on review is "whether, after viewing all of 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." *People v. Smith*, 177 Ill. 2d 53, 73, 685 N.E.2d 880, 888 (1997). A conviction should be set aside when there is a reasonable doubt of defendant's guilt because the evidence is so improbable or unsatisfactory. *People v. Jimerson*, 127 Ill. 2d 12, 43, 535 N.E.2d 889, 903 (1989). However, it is not this court's function to retry a defendant. *Jimerson*, 127 Ill. 2d at 43, 535 N.E.2d at 903. The trier of fact is responsible for making determinations of witness credibility and making reasonable inferences from the evidence. *Jimerson*, 127 Ill. 2d at 43, 535 N.E.2d at 903.

Section 31-1(a) of the Criminal Code of 1961 provides:

> "A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer *** or correctional institution employee of any authorized act within his official capacity commits a Class A misdemeanor."
>
> 720 ILCS 5/31-1(a) (West 2008).

Mere argument with a police officer regarding the validity of an arrest is not included within the definitions of obstruction and

resistance. *People v. Raby*, 40 Ill. 2d 392, 399, 240 N.E.2d 595, 599 (1968). Instead, these definitions "'imply some physical act or exertion'" by a defendant. *Raby*, 40 Ill. 2d at 399, 240 N.E.2d at 599, quoting *Landry v. Daley*, 280 F. Supp. 938, 959 (N.D. Ill. 1968). These words proscribe "'some physical act which imposes an obstacle which may impede, hinder, interrupt, prevent or delay the performance of the officer's duties, such as going limp, forcefully resisting arrest or physically aiding a third party to avoid arrest.'" *Raby*, 40 Ill. 2d at 399, 240 N.E.2d at 599, quoting *Landry*, 280 F. Supp. at 959. Struggling or wrestling with a police officer constitutes physical acts of resistance. *People v. Miller*, 199 Ill. App. 3d 603, 611, 557 N.E.2d 500, 505 (1990). Additionally, an act of resistance includes a defendant deliberately going limp to avoid an arrest. See *Raby*, 40 Ill. 2d at 402-03, 240 N.E.2d at 601.

In contrast, in *People v. Flannigan*, 131 Ill. App. 2d 1059, 1062-63, 267 N.E.2d 739, 741-42 (1971), the court reversed the defendant's conviction for resisting a police officer when the defendant refused to comply with a police officer's request to exit his vehicle, had to be physically removed from the vehicle, and jerked his arm out of the officer's grasp when he was being escorted to the squad car. The court stated the defendant's conduct was "at most an insubstantial display of antagonism or belligerence," but the conduct did not rise to the

level of resistance required for conviction. *Flannigan*, 131 Ill. App. 2d at 1063, 267 N.E.2d at 742.

However, in *People v. Crawford*, 152 Ill. App. 3d 992, 995, 505 N.E.2d 394, 396 (1987), this court stated the *Flannigan* decision is not binding on this court. In *Crawford*, 152 Ill. App. 3d at 993-95, 505 N.E.2d at 395-96, the defendant's conviction for resisting a police officer was upheld when he pulled away from the arresting officer and continued to struggle despite being informed he was under arrest. In upholding the conviction, this court stated a defendant may inquire about the reasons for an arrest, may protest and argue the arrest, but may not use physical action to impede the arrest. *Crawford*, 152 Ill. App. 3d at 995, 505 N.E.2d at 396. The court in *People v. Synnott*, 349 Ill. App. 3d 223, 228, 811 N.E.2d 236, 241 (2004), also refused to follow *Flannigan*. In *Synnott*, 349 Ill. App. 3d at 228-29, 811 N.E.2d at 241, the court held a defendant's repeated failure to obey a police order to exit his vehicle was sufficient to uphold a conviction for obstructing a police officer.

When the court finds the existence of a physical act, such an act will support a conviction for obstructing a peace officer even if the underlying arrest was unwarranted. *Miller*, 199 Ill. App. 3d at 611, 557 N.E.2d at 505. Ultimately, it is the trier of fact's responsibility to determine whether a defendant physically resisted or obstructed the officer's performance

of his official duties. *People v. Gill*, 355 Ill. App. 3d 805, 810, 825 N.E.2d 339, 343 (2005).

Defendant argues the State failed to prove him guilty beyond a reasonable doubt because his conduct was not sufficient to constitute the physical act required for conviction of obstructing a peace officer. Defendant argues he was not resisting arrest when he disobeyed Officer Aikman's order to get in the squad car. Instead, defendant argues he was struggling to maintain his balance because his hands were handcuffed behind his back. According to defendant, he was trying to vocally protest his arrest when he lost his balance and attempted to reposition his body to avoid falling. Despite defendant's testimony, the trial court found sufficient physical acts in defendant's conduct to justify a conviction. The court rejected defendant's loss-of-balance argument and found defendant knowingly braced himself against the door of the squad car for a period of time to delay or impede his arrest.

Viewing the evidence in the light most favorable to the prosecution, the trial court was not unreasonable in finding defendant committed a physical act intending to delay his arrest. The court found defendant knowingly braced himself against the squad car with the intent to delay or impede his arrest. The court's decision to reject defendant's testimony was reasonable, and this court will not substitute its own judgment for the

judgment of the trial court. Because of defendant's repeated failure to obey the police order, Officer Aikman was forced to strike defendant's leg four or five times. The strikes continued until defendant's knee buckled and Officer Aikman was able to push defendant into the car. As stated by the trial court, nothing in the record indicates defendant would have still struggled to enter the squad car had he voluntarily complied with Officer Aikman's request. We decline to follow *Flannigan* and find the evidence of resistance sufficient to uphold the trial court's finding of defendant's guilt beyond a reasonable doubt.

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

Affirmed.