2024 IL App (5th) 230143-U

NO. 5-23-0143

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Macon County.
	)	
v.	)	No. 21-CF-1265
	)	
DWAYNE BOBBITT,	)	Honorable
	)	Jeffrey S. Geisler,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE SHOLAR delivered the judgment of the court.
Justices Cates and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The conviction of the trial court is affirmed where the evidence was sufficient for a rational trier of fact to find each element of the offense beyond a reasonable doubt.

¶ 2 This is a direct appeal from the circuit court of Macon County. Defendant, Dwayne Bobbitt, was convicted of driving while license suspended and resisting a peace officer. The trial court sentenced him to 60 days in jail with six months of conditional discharge. Defendant appeals, arguing that the evidence was insufficient to convict him. For the reasons that follow, we affirm.

¶ 3 I. Background

¶ 4 On October 19, 2021, the State charged the defendant with, *inter alia*, resisting a peace officer in that the defendant knowingly resisted arrest by resisting the performance of Officer Paul Vickers, whom the defendant knew to be a peace officer engaged in the execution of his official

duties, when he intentionally impeded Officer Vickers by refusing to exit his car. See 720 ILCS 5/31-1(a) (West 2020).

¶ 5 The cause proceeded to a jury trial on January 10, 2023. The State called Officer Joseph Sawyer as its first witness. Officer Sawyer worked as a sergeant for the Decatur Police Department. Officer Sawyer was on duty on October 15, 2021, at approximately 1:56 a.m., when he was dispatched to a "standoff" with defendant. Officer Sawyer explained that he conducted a traffic stop on the defendant and the defendant barricaded himself in his vehicle and "refused to get out." After a period of time, once the defendant was out of the vehicle, Officer Sawyer came in contact with the defendant, and observed that the defendant had the "odor of alcohol coming from him" and "slurred speech." Based on his training and experience, Officer Sawyer believed defendant was under the influence of alcohol.

¶ 6 On cross-examination, Officer Sawyer testified that he was a passenger in Officer Vickers's vehicle, with Officer Vickers driving. The officers followed the defendant for a few blocks until he turned into a driveway. At that point the defendant was asked to leave his vehicle. When Officer Sawyer and Officer Vickers arrived in the vicinity where the defendant was driving, and ultimately stopped his vehicle, other officers were also present. Officer Sawyer testified that "[l]ikely the entire shift" was at the scene. He estimated "probably 10 or 12 people" with "10" squad cars were on the scene.

¶ 7 Officer Sawyer further testified that it took approximately 20 minutes for defendant to exit the vehicle. During that time, defendant was "yelling and cursing" at law enforcement. Defendant "routinely rolled [the window] up and down to yell and curse."

¶ 8 The State next called Officer Jacob Stewart, a police officer for the City of Decatur. Officer Stewart was on duty on October 15, 2021, at approximately 1:56 a.m. He arrived on-scene and

observed a black Ford Escape. He attempted to contact the occupants of the vehicle, but upon arriving on-scene, the vehicle drove away. Officer Stewart advised the occupants to stop and turned the lights of his squad car on. However, the vehicle did not stop. The squad car was equipped with audio visual recording, which "fairly and accurately" depicted what occurred. The State published People's Exhibit 1, without objection from defendant, which contained Officer Stewart's squad car footage. Officer Stewart asked defendant to exit the vehicle, but defendant refused. On cross-examination, Officer Stewart testified that Officer Oros was a passenger in his squad car during the incident.

¶ 9 Officer Chris Snyder, a patrol officer for the City of Decatur, testified next. Officer Snyder was on duty on October 15, 2021, at approximately 1:56 a.m., and was dispatched to the scene of the incident. Upon arrival, Officer Snyder observed Officer Stewart and Officer Oros contacting the vehicle, and he observed the vehicle drive away from the officers. Officer Snyder used his "PA system" to order the driver of the vehicle to "step out with his hands in the air." Defendant did not exit the vehicle but rolled down the window and "shouted several profanities towards me."

¶ 10 Officer Snyder wore a body camera, which "fairly and accurately" depicted the events of the early morning. The State published People's Exhibit 3, without objection from defendant, which contained footage from Officer Snyder's body camera.

¶ 11 Officer Snyder testified that the "standoff" lasted for approximately 20 minutes. During that time, defendant threw what Officer Snyder believed to be a firearm from the window of the vehicle. Officer Snyder acknowledged that he had a strong reaction to defendant throwing a firearm from the window. Although Officer Snyder believed that the discarded weapon was a "real gun," it was ultimately determined to be a pellet gun.

¶ 12 Officer Snyder also testified that during the standoff, defendant's interactions with law enforcement were argumentative. Defendant displayed slurred speech, and defendant yelled profanities through the window. When Officer Snyder opened the vehicle and pulled the defendant out, he smelled "the odor of alcoholic beverage" coming from defendant's breath. Based on his training and experience, Officer Snyder opined that defendant was intoxicated.

¶ 13 The State next called Officer Paul Vickers, a police officer for the City of Decatur. Officer Vickers was on duty on October 15, 2021, at 1:56 a.m. Officer Vickers was dispatched to the scene of the incident with his passenger, Officer Oros. Upon arrival, Officer Vickers observed a black Ford Escape. Officer Vickers observed the Ford Escape leaving the scene, and he followed the vehicle. Officer Vickers observed Officer Stewart attempt to initiate a traffic stop of the vehicle; however, the driver did not immediately pull over. Officer Vickers identified defendant in court and testified that defendant drove slowly until ultimately stopping. At that time, additional officers arrived on-scene.

¶ 14 Officer Vickers testified that defendant was ordered to get out of the vehicle "[s]everal times" but he did not exit the vehicle. Rather, defendant "became argumentative." Defendant yelled at law enforcement and "refused to get out several times." The defendant indicated he wanted his wife to be present. From the time Officer Vickers arrived on-scene to when defendant actually exited the vehicle, 21 minutes passed. Officer Vickers testified that during this time, defendant threw what law enforcement believed was a firearm from the window. It was later determined to be a "BB gun." Law enforcement was concerned that defendant had weapons in his vehicle. Officer Vickers wore a body camera, which "fairly and accurately" depicted the events of the early morning. Officer Vickers testified that defendant smelled of alcohol. Defendant was taken to jail, where he refused to perform a field sobriety test and would not consent to a blood draw.

The State introduced People's Exhibit 2, which contained two videos—one: a wide screen body camera view of the scene; and two: Officer Vickers's body camera. The videos were published to the jury without objection. The State also introduced Exhibit 4, which was a certified copy of a driving abstract for the defendant. The abstract indicated that defendant did not have a valid license, and defendant's license was suspended.

¶ 15 On cross-examination, Officer Vickers testified that a passenger was in the vehicle with defendant. Officer Vickers testified that he broke the passenger side window of the vehicle in order to extricate the passenger from the car. He further noted:

> "Q. And as [defendant] is rolling on the ground into the mud, you're breaking the window and going [*sic*] the passenger out of the vehicle; correct?
>
> A. That's correct."

¶ 16 The State rested. Defendant did not present any evidence.

¶ 17 Relevant to this appeal, in closing, the State argued that it met its burden to sustain the charge of resisting a peace officer. The State argued that as to the first proposition set forth in the jury instructions to prove the charge of resisting a peace officer, Officer Vickers was a police officer. Second, defendant knew Officer Vickers was a police officer, given at the time of the incident, defendant "was surrounded by about a dozen police officers" and that "a police officer was telling him to get out of the car" and defendant refused to exit the vehicle. As to the third proposition set forth in the jury instruction, that defendant knowingly resisted or obstructed the performance of Officer Vickers, the State argued:

> "Third proposition: That the defendant knowingly resisted or obstructed the performance of Officer Paul Vickers of an authorized act within his official capacity. His job there is to investigate. He's trying to figure out what happened at that initial stop. He gets to talk to the defendant. He gets to ask him at that point to get out of the car. It is absolutely within his official capacity to arrest the defendant, to tell him to get out of the

car, and in refusing to get out of the car and refusing to engage he in fact resisted or obstructed Officer Vickers."[1]

¶ 18 Defense counsel argued that there was "great concern[ ]" for officer safety during this incident, where law enforcement believed defendant was armed with a firearm. Defense counsel argued that defendant refused to exit the vehicle because he wanted his wife to show up so that there would be a witness. Defense counsel argued that defendant had concerns about encounters between law enforcement and black men. Defense counsel further argued:

> "You saw him. You saw Officer Snyder get him out of the car. He is not pulling away. He is not resisting that officer in that moment, and I suggest to you that he was not refusing the Officer's directive to get out of the car. He was concerned, and he was trying to wait until he had someone on scene that could be his witness in case something went south in a very difficult situation.
>
> So I would suggest to you the People have failed to prove that he decided to resist the officers, specifically Officer Vickers, that night when they gave directives."

¶ 19 In rebuttal, the State argued the following on the resisting charge:

> "Switching over to the resisting. [Defense counsel] wants you to look at the defendant's perspective. Okay. The jury instructions I read, and I am confident the judge will shortly be reading to you as what the law is, don't say it's not resisting if you just want to wait. It's not resisting if you just don't feel like doing it right now; you're putting it off. None of them have any sort of exception for he just doesn't feel like it. He didn't want to. It's not a defense. You can look at it from his perspective all you want. You can sit there and go, I get why he didn't want to get out. I get it, but that doesn't mean he didn't commit the offense, because he absolutely did."

¶ 20 Following approximately four hours of deliberation, the jury found defendant guilty of resisting a peace officer. The jury also found defendant guilty of driving while license suspended. The jury could not reach a unanimous verdict on the aggravated driving under the influence charge.

¶ 21 The matter proceeded to a sentencing hearing on February 27, 2023. The State dismissed the aggravated driving under the influence charge. Following the argument of the parties and a

[1]The State further agued facts relevant to the other offenses for which defendant was charged. None of those offenses are relevant to this disposition.

statement of allocution by defendant, the trial court sentenced defendant to 60 days in the Macon County jail with conditional discharge for six months.

¶ 22 This timely appeal followed.

¶ 23 II. Analysis

¶ 24 On appeal, defendant argues that the evidence in this case was insufficient to convict him of resisting a peace officer. Specifically, he contends that the State failed to prove beyond a reasonable doubt that he resisted arrest, because he did not engage in a physical act or materially impede his arrest when he remained inside his parked car waiting for his wife until officers opened his unlocked door and arrested him. For the following reasons, we disagree and affirm.

¶ 25 When a defendant challenges the sufficiency of the evidence, the reviewing court must look at the evidence in the light most favorable to the prosecution and consider whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Pollock*, 202 Ill. 2d 189, 217 (2002). "When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant." *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. McLaurin*, 2020 IL 124563, ¶ 22.

¶ 26 Following a finding of guilt, on review, all reasonable inferences in the record will be made in favor of the State. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). So long as *any* rational trier of fact could have found guilt established beyond a reasonable doubt, it is irrelevant on review whether the reviewing court itself believes such guilt was proven. *Jackson*, 443 U.S. at 319.

¶ 27 Here, the defendant was charged with resisting a peace officer in that he knowingly resisted the performance of Officer Vickers when defendant intentionally impeded Officer Vickers by refusing to exit his car. See 720 ILCS 5/31-1(a) (West 2020). To sustain a guilty conviction on this charge, the State must prove that the defendant (1) knowingly resisted the performance (2) by one known to the defendant to be a peace officer and (3) of any authorized act within his official capacity. *Id.* Defendant claims that the evidence adduced at trial was insufficient to support a conviction of resisting a peace officer in that he did not engage in a physical act or materially impede his arrest when he remained inside his parked car waiting for his wife until officers opened his unlocked door and arrested him. We disagree.

¶ 28 In support of his contentions defendant first argues that there was no physical act. "[T]o be guilty of resisting a peace officer as section 31-1 contemplates it, the defendant must physically exert himself in a manner that actually interferes with the administration of justice—that is, he must act in a way that *materially* opposes an officer's attempt to perform an authorized act." (Emphasis in original.) *People v. Sadder-Bey*, 2023 IL App (1st) 190027, ¶ 40. Defendant must have committed "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." (Internal quotation marks omitted.) *Id.* ¶ 41. Arguing with an officer does not, standing on its own, violate the law. *People v. Flannigan*, 131 Ill. App. 2d 1059, 1062 (1971). In the case before us, Officer Snyder testified that after approximately 21 minutes of delay, he eventually "opened the vehicle" and "pulled [defendant] out." Officer Vickers noted that upon being pulled from the vehicle, defendant was "rolling on the ground into the mud." As such, there is evidence from the record that defendant engaged in a physical act that actually hindered or impeded the performance of an officer's duty.

¶ 29 Second, defendant argues that he did not materially impede his arrest. In *People v. Sadder-Bey*, 2023 IL App (1st) 190027, ¶ 34, the First District noted that "the materiality requirement in obstructing justice also applied to the crime of obstructing a peace officer." See *People v. Mehta*, 2020 IL App (3d) 180020, ¶ 23. Thus, pursuant to *Mehta*, to be guilty of obstruction of a peace officer, a defendant must *materially* impede or hinder an officer in the performance of his or her authorized duties. *Id.* ¶ 26. The *Sadder-Bey* court recognized that *Mehta* discussed the crime of "obstructing," not "resisting." However, the *Sadder-Bey* court determined that "previous cases clearly hint there is [a requirement that defendant's obstruction be material] for the crime of resisting as well." *Sadder-Bey*, 2023 IL App (1st) 190027, ¶ 37. As such, the *Sadder-Bey* court determined "that section 31-1 includes a requirement that the defendant's acts materially interfere with the officer, and we extend it to the crime of resisting a peace officer." *Id.* ¶ 39.

¶ 30 "Thus, to be guilty of resisting a peace officer as section 31-1 contemplates it, the defendant must physically exert himself in a manner that actually interferes with the administration of justice—that is, he must act in a way that *materially* opposes an officer's attempt to perform an authorized act." (Emphasis in original.) *Id.* ¶ 40. "[T]he length of any delay or the brevity of any impediment is a factor, if not the primary factor, in determining" whether a defendant's actions have materially hindered or impeded officers in the performance of their official duties. *Mehta*, 2020 IL App (3d) 180020, ¶ 32. However, it is not the only factor. *Id.*

¶ 31 In support of his position, defendant argues that this case is similar to *People v. Flannigan*, 131 Ill. App. 2d 1059 (1971). In *Flannigan*, this court held that, where a defendant refused to exit his vehicle after being told that he was under arrest and temporarily put his car keys out of the reach of the officer attempting to retrieve them, his conduct was "at most an insubstantial display of antagonism or belligerence," and did not constitute material resistance. *Id.* at 1063. However,

Flannigan is factually distinguishable from the case at bar. In *Flannigan*, the only physical act of resistance alleged was defendant temporarily putting his keys out of reach. This act was brief, as only a moment later, defendant brought the keys within reach again, and the officer was able to retrieve them. The only other alleged act of resistance was defendant's verbal refusal to immediately exit his vehicle voluntarily. The officer "asked defendant two or three times to get out of the car and when defendant did not do so immediately, [the officer] reached in and took defendant from the car." *Id.* Critically, uncontroverted witness testimony in *Flannigan* established that "the whole incident lasted perhaps one minute." *Id.* at 1062-63.

¶ 32 Here, in contrast, defendant failed to comply with the directives of several different officers for over a period of about 21 minutes, and there was some evidence of physical resistance. Unlike *Flannigan*, where the defendant was asked two or three times to get out of the car by a single officer, defendant here was asked a countless number of times to do the same by at least a dozen armed officers. Additionally, Officer Snyder testified that he eventually "opened the vehicle" and "pulled [defendant] out." And, Officer Vickers noted that upon being pulled from the vehicle, defendant was "rolling on the ground into the mud." Thus, in the case at bar, defendant's conduct was not simply insubstantial belligerence.

¶ 33 Defendant also relies on *Sadder-Bey*, 2023 IL App (1st) 190027, ¶ 39, for the position that defendant's act of resistance must "impede, hinder, interrupt, prevent or delay the performance of the officer's duties" in a material manner. Here, there is sufficient evidence that the delay between when the arrest was first attempted and the completion of that arrest was appreciable, and thus hindered the officers' performance of their duties. From the time the officers first attempted to remove defendant from his vehicle to when they were finally successful in their endeavor, approximately 21 minutes passed. This is distinguishable from *Sadder-Bey*, where approximately

two minutes passed from the time that law enforcement asked the defendant for his license and insurance information to the time that the defendant actually got out of his vehicle. *Id.* ¶ 17. In the case before us, approximately 21 minutes passed.

¶ 34 As a whole, the record before us supports the jury's finding of guilt where defendant's actions tended to materially hinder or impede the officers in the performance of their duties. In the end, in order to effectuate defendant's arrest, Officer Vickers required the assistance of approximately a dozen additional officers, many of whom were called to the scene in response to defendant throwing what appeared to be a firearm out of the window of the vehicle. Moreover, the evidence was that law enforcement originally attempted to conduct a stop of defendant, who then drove away from the officers, before ultimately coming to a stop again. Then, 21 minutes passed during which the defendant refused to exit his vehicle. During this entire period of time, defendant was confrontational and aggressive, as he yelled profanities from both an open and closed window. Defendant also threw what officers believed to be a firearm from the window, causing concern for the officers' safety during the events as described by the witnesses. Officer Snyder testified that he eventually "opened the vehicle" and "pulled [defendant] out." Officer Vickers noted that upon being pulled from the vehicle, defendant was "rolling on the ground into the mud." Altogether, this constitutes sufficient evidence for a rational trier of fact to find beyond a reasonable doubt that the defendant's actions materially hindered or impeded the officers in the performance of their official duty, namely, arresting the defendant.

¶ 35 Since there was sufficient evidence for a rational trier of fact to find beyond a reasonable doubt that defendant's actions constituted material resistance, we conclude that a rational trier of fact could find the defendant guilty beyond a reasonable doubt. Therefore, defendant's sufficiency of the evidence claim fails.

¶ 36 III. Conclusion

¶ 37 As a rational trier of fact could have found beyond a reasonable doubt that defendant's actions constituted material resistance to resist a peace officer under section 31-1(a) of the Criminal Code of 2012 (720 ILCS 5/31-1(a) (West 2020)), the evidence is sufficient to support a verdict of guilty of resisting a peace officer. Accordingly, the judgment of the circuit court of Macon County is affirmed.

¶ 38 Affirmed.