2024 IL App (4th) 240504-U

NO. 4-24-0504

FILED
December 20, 2024
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
CHERYL L. DOHERTY,	)	No. 21CF188
Defendant-Appellant.	)	
	)	Honorable
	)	Mary E. Koll,
	)	Judge Presiding.

JUSTICE GRISCHOW delivered the judgment of the court.
Presiding Justice Cavanagh and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the State proved beyond a reasonable doubt defendant was guilty of resisting a peace officer.

¶ 2 Defendant, Cheryl L. Doherty (misspelled as Dougherty throughout the record), was convicted after a bench trial of resisting a peace officer (720 ILCS 5/31-1(a) (West 2020)) and sentenced to 10 days in jail and 24 months of conditional discharge. Defendant argues her conviction should be reversed because the State failed to prove she materially interfered with the police chief's efforts to arrest her. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with two misdemeanor offenses based on an incident that occurred on August 31, 2021. Count I alleged defendant committed the offense of obstructing a peace officer (*id.*) when she "knowingly obstructed the performance of Chief Tim Henson, of the

Dwight Police Department, of an authorized act within his official capacity, in that she refused to obey [his] commands, knowing [him] to be a peace officer engaged in the execution of his official duties." Count II alleged defendant committed the offense of resisting a peace officer (*id.*) when she "knowingly resisted the performance of [Chief Henson] of an authorized act within his official capacity, being the detention of the defendant, in that she pulled away from Chief Henson, knowing [him] to be a police officer engaged in the execution of his official duties." Count II was subsequently amended to change "detention" to "arrest." Before trial, the complaint was amended again to reflect the correct spelling of defendant's last name.

¶ 5 A. The Trial

¶ 6 A bench trial was held on August 31, 2021. The proceedings were not recorded. In lieu of a report of the proceedings or bystander's report, the parties submitted a "Joint Agreed Statement of Facts." See Ill. S. Ct. R. 323(d) (eff. July 1, 2017). This court's discussion of the trial court proceedings is based exclusively on that document.

¶ 7 1. *The State's Case: Testimony of Chief Henson*

¶ 8 Chief Henson testified defendant called the police on August 31, 2021, to complain of a dispute taking place at her apartment building between her and her neighbors, Kathryn Hanold and Deborah Holcomb. Chief Henson arrived at the building in his marked squad car and observed defendant yelling at two other females (the neighbors). He identified himself as law enforcement and attempted to separate the parties. Chief Henson stated defendant "immediately became argumentative." Defendant continued to argue with the neighbors and repeatedly attempted to approach them as Chief Henson tried to separate them. Chief Henson told defendant to go into her apartment and wait for him while he conducted his investigation, and defendant continued to argue with the neighbors. Chief Henson ordered defendant to return

to her apartment again; defendant continued to be argumentative with him, but she did comply.

¶ 9 While Chief Henson was speaking with the neighbors, defendant exited her apartment and began arguing with them and Chief Henson. Chief Henson ordered defendant to return to her apartment once again, but she refused and continued to argue with him. When defendant failed to comply, Chief Henson approached her and ordered her, once again, to return to her apartment to wait for him. While "doing his best to use a commanding, authoritative tone," Chief Henson warned defendant she would be arrested if she refused his order. Once again defendant continued to argue, but she did return to her apartment.

¶ 10 Approximately two minutes later, defendant exited her apartment again, resumed arguing, and demanded Chief Henson tell her his name. Chief Henson warned defendant again she would be arrested if she did not return to her apartment. Defendant continue to argue, and Chief Henson told her she was under arrest.

¶ 11 Chief Henson "attempted to place handcuffs on the Defendant, but the Defendant repeatedly pulled her arms away from Chief Henson. Chief Henson warned the Defendant that if she continued pulling her arms away, she would be under arrest for resisting a Peace Officer as well." Defendant continued to pull her arms away and argue with him. "[A]fter what he admitted was a brief struggle," Chief Henson was able to handcuff defendant. Chief Henson said doing so was "more difficult than it would have been if the Defendant had been cooperating." Chief Henson then told defendant to get into his squad car, but she refused. "Chief Henson told the Defendant she could either get in voluntarily, or that he would place her inside the vehicle himself. The defendant got into the car voluntarily after this warning but used abusive language against him while he took her to the police station."

¶ 12 2. *Defendant's Motion for a Directed Finding*

¶ 13 At the close of the State's case, the defense moved for a directed finding of not guilty on both counts. Specifically, as to count II, defendant asserted the State failed to prove she materially resisted her arrest and "cited the then recent obstruction statute amendment for the proposition that a Defendant may not be charged with resisting arrest when there is no underlying offense." After hearing argument, the trial court granted defendant's motion as to count I but denied it as to count II. The court determined it "could find that the Defendant materially resisted her arrest, and that there was an underlying offense for which the Defendant was placed under arrest."

¶ 14 3. *Defendant's Case*

¶ 15 Defendant testified that she cooperated with Chief Henson and asked for his name because she "could not see a name tag." Defendant stated that in response to her question, Chief Henson "became 'enraged,' and began screaming at her." Defendant testified Chief Henson "spat on her." Defendant also explained "any perceived resistance to being placed under arrest was a result of her having an issue with her shoulder."

¶ 16 Defendant called Will Veenstra, who testified he was present during the incident. Veenstra stated defendant was "completely compliant with Chief Henson's commands." Veenstra stated that when defendant asked Chief Henson for his name, he "became furious," was " 'red in the face,' " and screamed at her. Veenstra described Chief Henson as "aggressive," and he said he saw him "spit on the Defendant in a way that appeared intentional." On cross-examination, Veenstra denied having any relationship with defendant, but he acknowledged he knew her.

¶ 17 In rebuttal, the State recalled Chief Henson, "who testified that at no point did he

spit on the Defendant."

¶ 18 B. Verdict and Sentencing

¶ 19 After closing arguments, the trial court found defendant guilty beyond a reasonable doubt on count II, resisting a peace officer. A sentencing hearing was held on January 26, 2024. Defendant was given the option to reschedule so she could be sentenced by the original trial judge, Judge Koll, or to proceed that day before Judge Yedinak. Defendant indicated she preferred to be sentenced by Judge Yedinak. After hearing argument, defendant was sentenced to 10 days in jail, 24 months of conditional discharge, and 100 hours of community service. Defendant was assessed a $250 fine, as well as costs and fees. Defendant was also required to write a letter of apology to Chief Henson.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 The sole issue raised on appeal is whether the State proved beyond a reasonable doubt that defendant resisted arrest. "Where a criminal conviction is challenged based on insufficient evidence, a reviewing court, considering all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48. "This standard of review 'gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.' " *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A reviewing court will not substitute its judgment for that of the trier of fact and will not reverse the trial court's judgment unless the evidence is so "unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt." *People v. Sauls*,

2022 IL 127732, ¶ 52.

¶ 23 Section 31-1(a) of the Criminal Code of 2012 provides:

> "(a) A person who knowingly:
>
> (1) resists arrest, or
>
> (2) obstructs the performance by one known to the person to be a peace officer, firefighter, or correctional institution employee of any authorized act within his or her official capacity commits a Class A misdemeanor." 720 ILCS 5/31-1(a) (West 2020).

In *People v. Gotschall*, 2022 IL App (4th) 210256, ¶¶ 27-28, this court determined the crime of obstructing a peace officer includes a "material impediment requirement," wherein defendant's conduct must materially impede or hinder the officer in the performance of their authorized duties. Accord *People v. Mehta*, 2020 IL App (3d) 180020, ¶ 23. The First District extended the material impediment requirement to the crime of resisting a peace officer, finding: "Acts that obstruct might be different from those that resist, but the line by which they become criminal is drawn in the same place. While they are two separate prohibitions, the crime of obstructing or resisting a peace officer 'addresses related types of interference.' " *People v. Sadder-Bey*, 2023 IL App (1st) 190027, ¶ 39. Therefore, "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." *Id.* ¶ 40.

¶ 24 To prove defendant resisted arrest, the State must show she committed "a physical act that impedes, hinders, interrupts, prevents or delays the performance of the officer's duties,

such as going limp, forcefully resisting arrest, or physically helping another party to avoid arrest." *People v. McCoy*, 378 Ill. App. 3d 954, 962 (2008) (citing *People v. Raby*, 40 Ill. 2d 392, 399 (1968)). "The acts of struggling or wrestling with a police officer are physical acts of resistance that will support a conviction for resisting a peace officer, even if the underlying attempted arrest is unwarranted." *Id.* (citing *People v. Miller*, 199 Ill. App. 3d 603, 611 (1990)).

¶ 25 Defendant argues her conduct of "pull[ing] her arms away" while Chief Henson was attempting to handcuff her was due to her "bad shoulder" and did not constitute material interference with his efforts to arrest her. We disagree.

¶ 26 Although defendant called the police to the scene, Chief Henson described her demeanor when he arrived as argumentative. Defendant defied repeated requests for her to return to, and remain in, her apartment so Chief Henson could conduct his investigation into the dispute with her neighbors. Chief Henson testified he gave defendant two warnings that failure to comply would result in her arrest. Defendant's contention that "almost all of the 'resistance' was verbal" is not supported by the record. Chief Henson testified defendant "repeatedly pulled her arms away" while he was trying to handcuff her, at which time he warned her she would be arrested for resisting if she continued to do so. Despite this warning, defendant continued to pull away and engaged in a "brief struggle," which ended in her finally being handcuffed. Chief Henson's testimony was sufficient to establish that defendant's actions materially impeded his efforts to arrest her. Although defendant and Veenstra testified that defendant was compliant with Chief Henson's instructions, the trial court found "neither of them credible." This court will not substitute its judgment for that of the finder of fact on questions involving the weight of the evidence or credibility of witnesses. *Sauls*, 2022 IL 127732, ¶ 52. "The positive, credible testimony of a single witness, even if contradicted by the defendant, is sufficient to convict a

defendant." *Id.* We conclude the evidence presented at trial was sufficient to convict defendant of resisting arrest.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the trial court's judgment.

¶ 29 Affirmed.