2012 IL App (2d) 110593-U
No. 2-11-0593
Order filed December 31, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. WENDELL C. THOMPSON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 11-CF-18 Honorable Marmarie J. Kostelny, Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Presiding Justice Burke and Justice Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State proved defendant guilty beyond a reasonable doubt of obstructing a peace officer, as defendant's refusal to obey police orders, requiring the police to tackle and handcuff him, completely frustrated their ability to investigate a reported disturbance; (2) we vacated defendant's less serious convictions of domestic battery (insulting or provoking contact), as they were based on the same acts as his bodily-harm convictions.

¶ 2 Following a bench trial, defendant, Wendell C. Thompson, was convicted of four counts of domestic battery (720 ILCS 5/12-3.2(a)(1), (a)(2) (West 2010)), criminal damage to property (720 ILCS 5/21-1(1)(a) (West 2010)), and obstructing a peace officer (720 ILCS 5/31-1(a) (West 2010)).

He appeals, contending that (1) he was not proved guilty beyond a reasonable doubt of obstructing and (2) two of his domestic battery convictions should be vacated on one-act, one-crime grounds. We affirm in part and vacate in part.

¶ 3 Defendant was arrested following an altercation at a New Year's Eve party. At trial, Toni Thompson, defendant's 20-year-old daughter, testified that she was at the party at the home of her mother, LaToya Williams. Defendant was arguing with Toni's sister, Talisha, and Talisha's boyfriend, Torance Henderson. Toni saw Talisha on the ground and was helping her up when she was struck in the chest by a bat or bedpost. Toni did not see who hit her, but she turned around and saw defendant with a bat or post in his hands. Toni fell to the ground and felt a little dizzy.

¶ 4 Talisha Thompson testified that she was not drinking at the party and did not see defendant drinking. She did not see who hit her, but defendant was somewhere behind her swinging a bedpost. She did not see defendant hit Toni. On cross-examination, Talisha said that earlier in the evening police took liquor from her and her boyfriend and gave it to defendant. When Henderson tried to get it back, he and defendant got into an argument.

¶ 5 Henderson testified that he had been at the party, drinking and smoking marijuana with defendant. The police confiscated some liquor. When the party was over, Henderson asked for it back, but defendant would not give it to him. Henderson's brother, Tyler, came over to give him a ride home. Henderson was in the backseat of his mother's car when defendant "busted out" the window with a table leg.

¶ 6 Tyler Henderson said that he went to the party to pick up his brother, who had called for a ride. Tyler went inside the house, where defendant and Torance were arguing. As Tyler and Torance got in the car to leave, defendant followed them outside and broke the car's back window with a

stick of some kind. When Tyler returned to pick up Talisha, defendant again charged the car. The police arrived and told defendant to stop, but he continued to run alongside the car. The officers eventually grabbed defendant and put him on the ground.

¶ 7 Aurora police investigator Chris Converse testified that he and his partner were dispatched to the party at 510 North Lake Street. When they arrived, Converse saw defendant shouting and running alongside a white vehicle. Officer Scott Reed arrived and yelled three or four times for defendant to back away from the vehicle. Converse and Reed grabbed defendant, put him on the ground, and handcuffed him. Defendant smelled of alcohol, and Converse opined that he was intoxicated.

¶ 8 Reed largely corroborated Converse's testimony. He yelled three or four times for defendant to step away from the car, but defendant continued to yell at the car's occupants, so Reed and Converse put him on the ground and handcuffed him.

¶ 9 The trial court found defendant not guilty of aggravated battery to Toni and Talisha and not guilty of two counts of battery to Asha Cooper, a cousin. However, the court found defendant guilty of two counts of domestic battery to Toni Thompson, two counts of domestic battery to Talisha Thompson, obstructing a peace officer, and criminal damage to property. The court sentenced defendant to 364 days in jail, with credit for 159 days served. Defendant timely appeals.

¶ 10 Defendant first contends that he was not proved guilty of obstructing a peace officer. Citing recent cases from the supreme court and this district, he argues that his momentary refusal to step away from the car did not actually obstruct the officers' investigation. We disagree.

¶ 11 When a defendant challenges on appeal the sufficiency of the evidence, we ask only 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). As a reviewing court, we may not substitute our judgment for that of the trier of fact on questions involving the weight of the evidence, the witnesses' credibility, or the resolution of conflicting testimony. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009).

¶ 12 Defendant was convicted of obstructing a peace officer. Section 31-1(a), which defines the offense, provides:

> "A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer *** of any authorized act within his official capacity commits a Class A misdemeanor." 720 ILCS 5/31-1(a) (West 2010).

Section 31-1 does not define the term "obstruct." When the statute was adopted, "the dictionary defined 'obstruct' to mean '1: to block up: stop up or close up: place an obstacle in or fill with obstacles or impediments to passing *** 2: to be or come in the way of: hinder from passing, action, or operation: IMPEDE ***.' Webster's Third New International Dictionary 1559 (1961). In turn, 'hinder' means 'to make slow or difficult the course or progress of' (*id.* at 1070), and 'impede' means 'to interfere with or get in the way of the progress of' (*id.* at 1132)." *People v. Baskerville*, 2012 IL 111056, ¶ 19.

¶ 13 Here, defendant clearly impeded and hindered the officers' investigation. Their entire reason for being there was to investigate defendant's behavior at the party. They could not do this while defendant was pounding on the car and yelling at its occupants. Defendant's conduct prevented the police from interviewing either defendant or the car's passengers. This is not a case where defendant minimally delayed the investigation before eventually complying. Defendant never complied with Reed's request to desist until the officers forced him to do so by tackling him.

¶ 14 Defendant cites *Baskerville*, *People v. Taylor*, 2012 IL App (2d) 110222, and *People v. Comage*, 241 Ill. 2d 139 (2011), in support of his argument that his behavior did not materially obstruct the officers' investigation. These cases are distinguishable.

¶ 15 In *Baskerville*, Officer John Dyke saw the defendant's wife driving and believed that her license was suspended. He followed her as she pulled into her driveway and walked into her house. Outside the house, Dyke talked with the defendant, who said that his wife was not home. He went back inside. When he returned, he said that he did not know what was going on, but that Dyke could go inside and search. Dyke declined. The defendant was convicted of obstructing a peace officer. On appeal, the supreme court held that obstruction did not require a physical act, but it nevertheless reversed the defendant's conviction, noting that the defendant consented to a search but Dyke chose not to enter the house. *Baskerville*, 2012 IL 111056, ¶ 35.

¶ 16 In *Comage*, the Illinois supreme court reversed the conviction of a defendant who attempted to conceal drug paraphernalia from police officers. The court held that, although the evidence was out of the officers' sight for a few seconds, they knew at all times where it was and were able to recover it within 20 seconds. Thus, the defendant's conduct did not materially impede the investigation. *Comage*, 241 Ill. 2d at 150.

¶ 17 In *Taylor*, we reversed the defendant's conviction of obstructing. There, Officer Paul Mott saw the defendant, Donnell Taylor, crossing a street. Mott recognized the defendant from previous encounters and knew that there was a warrant for his arrest. The defendant's photo was on the squad car's visor. Mott approached the defendant and asked for identification, as he was not " '100 percent' " sure that the man he saw was the defendant. *Taylor*, 2012 IL App (2d) 110222, ¶ 4. The defendant initially told Mott that he was Keenan Smith and gave a false birth date. Mott ran this

information through his computer and learned that no such person existed. When Mott confronted the defendant with this information, he continued to insist that he was Keenan Smith. This went on for "a few minutes" before Mott said, " 'Hey, Donnell,' " and the defendant replied, " 'Yeah?' " *Id.* The defendant was convicted of obstruction of justice, but we reversed the conviction. We held that *Baskerville* means that the relevant issue in weighing a sufficiency-of-the-evidence challenge to an obstruction conviction is whether the defendant's conduct actually "posed a material impediment to the administration of justice." *Id.* ¶ 17. Applying that standard, we held that the defendant's giving a false name did not materially impede Mott. We noted that Mott was always virtually certain that the defendant was Taylor. While his act of running the false information through the computer was "commendable," it did not materially impede the investigation, and he in fact arrested the defendant a few minutes later. *Id.*

¶ 18 Defendant's conduct here obviously impeded the investigation much more than that of the defendants in *Baskerville*, *Comage*, and *Taylor*. Defendant, who unlike the *Baskerville* defendant was the subject of the investigation, completely destroyed the officers' ability to question anyone at the scene until they compelled defendant's compliance by tackling him.

¶ 19 This case is more like *People v. Nasolo*, 2012 IL App (2d) 101059, and *People v. Synnott*, 349 Ill. App. 3d 223 (2004). In *Nasolo*, the defendant's refusal to be fingerprinted or photographed completely frustrated the booking process. We thus affirmed the conviction of obstructing, noting that the officer "was actually impeded from completing the booking process." *Nasolo*, 2012 IL App (2d) 101059, ¶ 13. In *Synnott*, we affirmed a conviction of obstructing where the defendant refused to exit his car despite being told several times to do so, thus impeding the officer's ability to investigate the defendant for possibly driving under the influence. *Synnott*, 349 Ill. App. 3d at 228-

29. Here, too, defendant's refusal to obey Reed's orders to move away from the car completely frustrated the officers' ability to investigate. Thus, defendant was proved guilty beyond a reasonable doubt of obstructing.

¶ 20 Defendant further contends that two of his domestic battery convictions must be vacated on one-act, one-crime grounds. As noted, defendant was convicted of two counts of domestic battery against Toni Thompson and two counts of domestic battery against Talisha Thompson. As to each victim, one count was based on causing bodily harm and one count was based on insulting or provoking contact. Defendant contends that the insulting-or-provoking conviction for each victim must be reversed. The State confesses error.

¶ 21 A defendant suffers prejudice where more than one offense is carved from the same physical act. *People v. King*, 66 Ill. 2d 551, 566 (1977). A physical act is "any overt or outward manifestation which will support a different offense." *Id.* Where a defendant commits multiple acts against a single victim, the State may obtain multiple convictions, but the charging instrument, and the State's evidence at trial, must differentiate between the various acts. *People v. Crespo*, 203 Ill. 2d 335, 342-45 (2001). Here, the State concedes that the evidence does not support multiple convictions against each victim. We agree. The State made no effort to establish that defendant committed multiple acts against each victim, but merely argued alternate theories of liability. As the convictions based on insulting or provoking contact are less serious than those based on bodily harm, we vacate those convictions. See *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 18.

¶ 22 The judgment of the circuit court of Kane County is affirmed in part and vacated in part.