

No. 1-12-3264

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 MC 1230972
	)	
JASMINE RODRIGUEZ,	)	Honorable
	)	Peggy Chiampas,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE DELORT delivered the judgment of the court.  
Justices Cunningham and Connors concurred in the judgment.

**ORDER**

¶ 1 **Held:** Defendant was properly found guilty of resisting or obstructing a peace officer when she thrashed about and shifted her weight in various positions, knowingly preventing police officers from arresting her.

¶ 2 Following a bench trial, defendant Jasmine Rodriguez was convicted of resisting or obstructing a police officer and was sentenced to one year of conditional discharge. On appeal, she contends the State failed to prove her guilty beyond a reasonable doubt where the police

officers failed to convey their intent to arrest defendant, and as a result, she could not have known that she was resisting an authorized act.

¶ 3 Officer David Valentin testified that on June 20, 2011, he was responding to a dispatch of a disturbance in the area of Wrightwood and Orchard in Chicago. Valentin spoke to Rachel Augustini, who stated that a Hispanic woman threatened to strike her with a purse and threatened her with a knife. Augustini's boyfriend, Andrell, was also on the scene. They told Valentin that the woman went to a church located at Deming and Orchard. Valentin proceeded to the church and observed defendant sitting on the church steps. Valentin was in uniform and arrived in a marked police car.

¶ 4 Yelling from about 10 feet away in the car, Valentin asked defendant for her name and whether things were okay with her. Defendant asked whether Valentin was going to arrest her and Valentin replied that he was not. Defendant then told Valentin "F\*\*\* you, I ain't got to talk to you." Valentin radioed for another assisting officer, and Officer Smitka arrived. Valentin and Smitka approached defendant to within three feet of her and "attempted to engage her in conversation" regarding the disturbance call the officer received. Defendant replied that unless Valentin was arresting her, she was not going to talk to him. The officers tried to talk to her again and defendant stated, "F\*\*\* you, I ain't going to jail." Augustini and Andrell then arrived and positively identified defendant as the person who threatened Augustini. After the identification, the officers tried to place defendant under arrest by asking her to "step up and put her hands behind her back." Defendant replied that she was not going to get up and was not going to jail. The officers "attempted to control her by grabbing her arms," while defendant was still seated, with Valentin grabbing the left arm and Smitka grabbing the right.

¶ 5 Valentin tried to place handcuffs on defendant but she began flailing her arms back and forth, thrashing about, moving her weight away from the officers. When Valentin placed a handcuff on defendant, she pulled away and shifted her weight such that Valentin's hand struck the stairs, causing a cut and bleeding from his right thumb. After about one minute of attempting to place defendant under arrest, the officers were able to handcuff defendant. The officers searched defendant and found a steak knife in her purse. Valentin did not document in the arrest report that he asked defendant to stand three times and she refused each time. Valentin also did not document in a report that defendant acted as "dead weight" when he tried to place her in handcuffs.

¶ 6 Officer Mike Smitka testified that he arrived on the scene and approached Valentin and defendant. He heard Valentin ask defendant her name and defendant asked whether Valentin was going to arrest her. Valentin asked defendant's name again, and defendant replied again with profanity and told Valentin to arrest her. Defendant also told the officers not to touch her. The officers tried to get defendant to stand, but she locked her arms in front of her. The officers leaned in to try to get defendant to stand but defendant "started moving her body back and forth, shifting, rolling away from [them], pulling and pushing her body. [They] were attempting to get her arms to put them behind her back so [they] could put the handcuffs on her." Both officers fell forward and Valentin hit his hand on the concrete, scraping his hand. Ultimately, the officers handcuffed defendant and recovered a knife from her purse.

¶ 7 Defendant's testimony differed dramatically from the officers. She testified that she was sitting on the steps of a church when Valentin approached and asked whether she had a weapon. Defendant replied sarcastically, asking whether Valentin saw a weapon. Valentin "jumped" on her, handcuffed her, and threw her in the back of his police car, causing her face to hit the back

of the car. Only a second lapsed between Valentin's approach asking whether she had a weapon to his "pouncing" and arresting her. No other officer was present during defendant's arrest; other officers arrived after she was in the police car.

¶ 8 The court stated during its findings that it found the officers' testimony credible. The court found defendant's testimony "completely incredible," and did not believe "one word" of her testimony. The trial court found her guilty. Defendant alleged in a posttrial motion that her trial counsel was ineffective and she sought to fire her attorney and have the public defender appointed. The trial court held a hearing on her claims, ultimately finding that trial counsel was effective and denying counsel's motion to withdraw as defendant's counsel. Defendant then moved for a new trial. Following argument, the trial court denied the motion. The court sentenced defendant to one year of conditional discharge, ordered her to have a mental health evaluation completed, and to follow all recommendations resulting from the evaluation. The trial court also denied defendant's motion to reconsider sentence.

¶ 9 Defendant appeals, contending that the State failed to meet its burden of proof at trial because the police officers failed to convey their intent to arrest her, and therefore, she could not have knowingly resisted their authorized act of arresting her. "When a defendant challenges the sufficiency of the evidence, the relevant inquiry is whether, after viewing 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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Ross*, 229 Ill. 2d 255, 272 (2008). The reviewing court must construe all reasonable inferences in favor of the prosecution. *People v. Bush*, 214 Ill. 2d 318, 326 (2005). The reviewing court does not retry the defendant. *Ross*, 229 Ill. 2d at 272. Rather, the trier of fact determines witness credibility and weighs testimony. *Id.*; see *People v. Sutherland*, 223 Ill.

2d 187, 242 (2006). This court will not set aside a criminal conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of defendant's guilt. *People v. Kotlinski*, 2011 IL App (2d) 101251, ¶ 38.

¶ 10 To sustain a conviction for resisting or obstructing a peace officer, the State was required to prove that (1) defendant knowingly resisted or obstructed a peace officer; (2) the officer was performing an authorized act in his official capacity; and (3) defendant knew he was a peace officer. 720 ILCS 5/31-1(a) (West 2010). Defendant contends that she was not aware at the time of the incident that the officers were attempting to place her under arrest, and therefore she could not have resisted the officers' authorized act.

¶ 11 "It is the general rule in Illinois that the testimony of an officer involved in the arrest, regarding a defendant's behavior at the time of arrest, is sufficient to sustain a conviction of resisting or obstructing a peace officer." *People v. Brouder*, 168 Ill. App. 3d 938, 943 (1988). Here, Valentin testified that he was in a marked police car and wearing a police uniform when he approached defendant as she sat on the church steps. After a brief exchange, wherein defendant was admittedly sarcastic and refused to directly answer the officer's questions, the complainant and her boyfriend arrived on the scene and identified defendant as the woman who threatened to attack her with a purse and with a knife. After this identification, Valentin and Smitka tried to arrest defendant, with each officer grabbing one of defendant's arms. Defendant began "thrashing about," shifting her weight away from the officers, and moving her arms back and forth, preventing her arrest. Defendant only engaged in this physical resistance after the officers grabbed her arms and tried to place handcuffs on her. Officers do not have to use the specific words, "You are under arrest," (*People v. McKinney*, 62 Ill. App. 3d 61, 67 (1978)) where a reasonable person would have thought she was under arrest under these circumstances (see

*People v. Howlett*, 1 Ill. App. 3d 906, 910 (1971)). The trial court found Valentin and Smitka's testimony to be credible, and did not believe "one word" of defendant's testimony. Based on our review of the record, we will not set aside the trial court's credibility determination or the conviction where the evidence is not so unreasonable or improbable that it creates a reasonable doubt as to defendant's guilt.

¶ 12 Defendant argues that *People v. Kotlinski*, 2011 IL App (2d) 101251 is instructive. In *Kotlinski*, the defendant, a passenger in an automobile, was charged with obstructing a peace officer during the performance of a driving under the influence (DUI) investigation of the driver, the defendant's wife. While the officer was conducting field sobriety testing, he relocated the defendant's wife near his squad car, and the defendant stepped out of his own car. The appellate court reviewed a videotape of the encounter, and determined that at the time the defendant stepped out of the car, he could not see what the officer was doing. *Id.* ¶ 57. The court concluded the defendant, therefore, could not have known he was interfering with the police officer's DUI investigation. The appellate court ultimately reversed the defendant's obstructing conviction. *Id.* ¶ 60.

¶ 13 We find defendant's attempt to analogize her case to *Kotlinski* unavailing. Unlike the defendant in *Kotlinski*, whom the appellate court found had no way to know what the officer was doing, our defendant has never suggested that she was unaware that the two men, in full uniform, who told her to stand up and grabbed her arms, were police officers nor that she was unaware of the actions they were taking. Instead, defendant argues that, because the officers never explicitly stated that they were arresting her, she was incapable of perceiving their intent to do so when they asked her to stand up and place her hands behind her back after the victim identified her as her attacker. We disagree, and find that a reasonable person in defendant's situation would

understand the officers' intent in asking her to stand and place her hands behind her back was to effectuate an arrest. Therefore, we find that a rational trier of fact could have found all of the essential elements of the offense beyond a reasonable doubt.

¶ 14 We affirm the judgment of the circuit court of Cook County, finding defendant guilty of resisting or obstructing a peace officer.

¶ 15 Affirmed.