

2014 IL App (2d) 121416-U
No. 2-12-1416
Order filed June 26, 2014

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 12-CM-347
)	
ANDREW KUELLING,)	Honorable
)	John S. Lowry,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Presiding Justice Burke and Justice McLaren concurred in the judgment.

ORDER

- ¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of obstructing a peace officer, as his interference actually impeded a police investigation, although his interference was brief and the investigation might not have produced an arrest.
- ¶ 2 Following a jury trial, defendant, Andrew Kuelling, was convicted of obstructing a peace officer (720 ILCS 5/31-1(a) (West 2012)) and sentenced to court supervision. He appeals, contending that he was not proved guilty beyond a reasonable doubt where his conduct did not materially impede the officers' investigation. We affirm.

¶ 3 Defendant was charged following an incident at the Crazy Times bar. Winnebago County deputy sheriff Daniel Ferruzza testified at trial that he was dispatched to the bar to investigate a possible fight. When he arrived, he saw about four people standing outside the bar, including defendant and defendant's brother, Jeremiah, who had a cut under his eye.

¶ 4 Ferruzza spoke to Jeremiah, attempting to learn who had hit him. However, defendant interrupted the conversation by telling Jeremiah not to provide his identification. Defendant was angry and belligerent. When Ferruzza asked defendant for identification, defendant told the deputy to "F-off." Ferruzza told defendant twice to leave the scene, but defendant refused. As Ferruzza placed his hand on defendant's wrist, defendant pulled away. Ferruzza and Deputy Jacob Marino tackled defendant, handcuffed him, and placed him in a squad car.

¶ 5 Ferruzza estimated that approximately five to seven minutes passed from the time he arrived at the scene until defendant was tackled. He opined that defendant's actions hampered his ability to get the vital information necessary to pursue Jeremiah's assailant.

¶ 6 Marino largely corroborated Ferruzza's testimony. He added that, after arresting defendant, the officers attempted to speak with Jeremiah, but he was uncooperative and they were unable to get any further information from him. The deputies proceeded to interview other witnesses in the parking lot.

¶ 7 Jeremiah's girlfriend, Ella Henderson, testified that she was at Crazy Times that night. She saw a large group yelling outside, and someone punched Jeremiah in the face as he was walking through the parking lot. He was bleeding and lost consciousness. Neither Henderson nor Jeremiah saw who punched Jeremiah.

¶ 8 The officers arrived and asked Jeremiah for identification. Defendant responded that Jeremiah would not give it. The officers then tackled defendant and handcuffed him.

Approximately 30 to 45 seconds passed between when the officers arrived and when they tackled defendant. The officers never asked defendant to leave, to calm down, or to provide any information about what happened to Jeremiah.

¶ 9 Defendant testified that he became “very, very upset” when his brother was attacked. Defendant did not know who hit him. The officers arrived and asked Jeremiah for identification. Defendant wanted to get Jeremiah to a hospital, so he told Jeremiah not to provide any identification. The officers grabbed defendant by the wrist, threw him to the ground, and handcuffed him.

¶ 10 The jury found defendant guilty. The trial court denied defendant’s motion for a new trial and sentenced him to court supervision. Defendant timely appeals.

¶ 11 Defendant contends that the State failed to prove that he obstructed the deputies’ investigation of the battery to his brother. He argues that his behavior at most delayed the investigation by a few minutes and that the officers were unlikely to identify the culprit in any event because no one at the bar saw who hit Jeremiah.

¶ 12 Where a defendant challenges on appeal the sufficiency of the evidence, we ask whether, after viewing all the evidence in a light most favorable to the prosecution, a rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). We may not substitute our judgment for that of the trier of fact on questions involving the weight of the evidence, the credibility of the witnesses, or the resolution of conflicting testimony. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). To convict defendant, the State had to prove that he resisted or obstructed “the performance by one known to the person to be a peace officer *** of any authorized act within his official capacity ***.”

720 ILCS 5/31-1(a) (West 2012). Defendant questions whether the State proved that he obstructed the officers.

¶ 13 Here, Ferruzza testified that defendant interrupted his questioning of Jeremiah by telling Jeremiah not to provide any information. Defendant was angry and belligerent, refused to provide his own identification, refused at least two requests to leave the scene, and pulled away as the officers attempted to handcuff him. Ferruzza and Marino both testified that their encounter with defendant lasted between three and five minutes. During this time, they had to stop their investigation to deal with defendant.

¶ 14 It is thus clear that defendant's behavior actually obstructed the officers' investigation. While they were attending to defendant, Jeremiah's assailant might have left the premises. Other witnesses with vital information might have gone home. Moreover, although defendant claims that his only concern was getting medical attention for his brother, the officers had to delay assessing Jeremiah's condition, and perhaps calling for medical assistance, because defendant kept interrupting.

¶ 15 In arguing that his conduct was at most a *de minimis* interference with the investigation, defendant relies on several cases, but they are distinguishable. Defendant first cites *People v. Comage*, 241 Ill. 2d 139 (2011), for the proposition that, enacting the closely related section 31-4 of the Criminal Code of 1961, the legislature "intended to criminalize behavior that *actually* interferes with the administration of justice[.]" (Emphasis in original.) *Id.* at 149 (citing 720 ILCS 5/31-4 (West 2006)). Defendant then cites several cases where the defendants' conduct caused at most *de minimis* delays in the officers' investigations.

¶ 16 In *People v. Baskerville*, 2012 IL 111056, the supreme court affirmed the appellate court's reversal of the conviction of a defendant who gave the police false information about the

whereabouts of his wife. The defendant, after initially telling Officer Dyke that his wife, Christine, was not at home, told him that he could go inside and look, but the officer declined. Thus, “[a]t no point did defendant’s false statement that Christine was not home hinder Dyke in executing the traffic stop. Even if Dyke had probable cause to arrest Christine, and Christine thwarted his ability to arrest her in a public place, defendant consented to a search and Dyke chose not to enter the home. Therefore, there was no evidence that defendant’s statement hampered or impeded the officer’s progress in any way.” *Id.* ¶ 35. In other words, the defendant did not materially hinder the officer’s ability to continue his investigation.

¶ 17 In *People v. Taylor*, 2012 IL App (2d) 110222, the defendant gave a false name in response to an officer’s request for identification. We reversed the conviction, noting that the officer had testified that, despite the false statement, he was “ ‘pretty sure’ ” of the defendant’s identity in any event, and he arrested him almost immediately. *Id.* ¶ 17. By contrast, in *People v. Nasolo*, 2012 IL App (2d) 101059, we affirmed the conviction of a defendant who refused to be photographed or fingerprinted during the booking process, noting that, rather than merely delaying the booking process, the defendant’s conduct frustrated it altogether.

¶ 18 We do not read these cases as standing for the proposition that officers must be completely prevented from accomplishing their objective. In *Nasolo*, the defendant was presumably booked eventually. Nor do we read the cases as holding that a short delay will be considered *de minimis*. If there is a common thread running through the cases, it is that completely stopping the officers’ investigation for a significant period amounts to obstruction, but merely “delaying the inevitable” does not. The amount of time necessary to meet a significant period depends on the circumstances of the case. The officers in *Baskerville* and *Taylor* never had to completely stop their efforts to make the arrests (although one did so

voluntarily). This case is thus more like *Nasolo*, where the officers eventually completed their task of investigating the assault.

¶ 19 This case also resembles *People v. Gordon*, 408 Ill. App. 3d 1009 (2011), which the State cites. There, the defendant and another occupant of a vehicle subjected to a traffic stop approached the vehicle while the officers were searching it. Both yelled profanities at the officers, telling them to “ ‘F*** off.’ ” *Id.* at 1012. The defendant ignored repeated orders to leave the area, continuing to yell profanities at the officers. *Id.* The court affirmed the defendant’s conviction, holding that the trial court could reasonably conclude that the defendant’s actions, which closely mirror those of defendant here, actually impeded the officers’ investigation. *Id.* at 1017.

¶ 20 Defendant further contends that he could not have hindered the deputies’ investigation because they would not have found the assailant in any event. Defendant points out that no one who testified at trial claimed to have seen who struck Jeremiah. However, he cites no authority for the proposition that his guilt depends upon the officers’ likelihood of success in locating the assailant. As noted, the officers might have had more success had they been able to interview witnesses sooner instead of having to deal with defendant, but, in any event, the officers were authorized to conduct the investigation regardless of whether they ultimately arrested anyone.

¶ 21 When the deputies received a report of a bar fight, they were obviously required to investigate the incident and file a report, even if no one was arrested in connection with the incident. There were other reasons for conducting an investigation. They had to document the victim’s injuries, determine if anyone else was injured and required medical attention, see whether any property damage occurred, and find out if any of the combatants remained on the

premises. Thus, defendant could still be found to have obstructed the investigation even if it ultimately proved fruitless in terms of arresting the assailant.

¶ 22 The judgment of the circuit court of Winnebago County is affirmed.

¶ 23 Affirmed.