2016 IL App (2d) 150055-U
No. 2-15-0055
Order filed December 15, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JOSE MARTINEZ, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 14-CM-428 Honorable Elizabeth K. Flood, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of obstructing a peace officer: the trial court was entitled to find that the officer was engaged in an authorized act, as defendant's girlfriend consented to the officer's remaining on the premises to investigate a reported domestic disturbance, and that defendant engaged in disruptive behavior that materially impeded the officer's investigation.

¶ 2 Defendant, Jose Martinez, appeals his conviction of obstructing a peace officer (720 ILCS 5/31-1(a) (West 2012)). He contends that the evidence was insufficient to prove beyond a reasonable doubt that the investigating officer was engaged in a lawful act or that defendant materially impeded an investigation. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In January 2014, defendant was charged with obstructing a peace officer in connection with an incident in which police were dispatched to investigate a disturbance at his home. In late 2014, a bench trial was held. There is no transcript of the proceedings. Instead, the following facts are from an agreed statement of facts.

¶ 5 On January 25, 2014, at around 5 a.m., Sergeant Stransky and another officer of the Montgomery police department were dispatched to defendant's home in response to a 911 call for "a possible domestic." He did not know who called 911. He also did not know if the call came from inside of the home, if weapons were involved, or if there was anyone in danger. The evidence indicated that defendant's pregnant girlfriend also resided at the residence, as she referred to it in testimony as "their home."

¶ 6 When the officers arrived, defendant answered the door and, when Stransky explained why they were there, defendant said " 'no problem.' " Defendant put his dogs away and let the officers inside. However, within approximately one minute, he became aggressive and hostile. Defendant's girlfriend and her stepmother were there and were cooperative. They appeared unharmed. When Stransky attempted to talk to them, defendant interrupted, stating " 'get the fuck out of my house.' " Defendant's girlfriend told defendant to " 'shut the fuck up.' " Stransky told defendant that, if he did not stop, he could be arrested for obstructing the investigation. Stransky was unable to perform his investigation with defendant shouting and he arrested defendant inside of the residence. The investigation was completed after defendant was removed from the scene. On cross-examination, he said that defendant asked him to leave more than once and that he stayed when he no longer had defendant's consent to be in the home.

¶ 7 After the State's case, defendant moved for a directed finding. The trial court denied the motion, based on the apparent authority of defendant's girlfriend and her stepmother and *Georgia v. Randolf*, 547 U.S. 103 (2006),[1] which held that an invitation for an officer to enter and search a residence is invalid when accompanied by a co-tenant's asserted dispute of the search, but which also noted that the case had no bearing on the capacity of the police to protect domestic violence victims.

¶ 8 The defense presented evidence from defendant's girlfriend, who testified that defendant had been drinking and that they had gotten into an argument. She said that she spoke to the officers for as long as four minutes and told them that everything was fine and that it was just a verbal argument. She said that, after she was questioned, she was present while the officers spoke to her stepmother for approximately four minutes and asked the same questions. According to defendant's girlfriend, the officers were repeating questions and not asking any more questions when defendant began yelling. She said that defendant asked the officers to leave and that defendant was warned to stop talking. Defendant was put in handcuffs and, at that point, she told defendant to " 'shut up.' "

¶ 9 The stepmother of defendant's girlfriend testified that she spoke to one officer while another talked to her stepdaughter separately. She told the officer that everything was fine and that it was just an argument.

¶ 10 In rebuttal, Stransky testified that he spoke to defendant's girlfriend with defendant standing beside him and that defendant became belligerent almost immediately. He said that he was unable to hear the answers to his questions while defendant was yelling and that defendant continued to yell and interrupt when asked twice to be quiet. His investigation was not complete

[1] The agreed statement of facts mistakenly refers this case as *Georgia v. Martinez*.

when he removed defendant from the scene. He did not speak to the stepmother of defendant's girlfriend and was not present for any questioning of her.

¶ 11 The trial court found defendant guilty based on the credibility of the witnesses and Stransky's credible testimony that defendant's demeanor and actions hindered his ability to question the witnesses, who were otherwise cooperative. Defendant's motion for a new trial was denied. He was sentenced to six months of conditional discharge and 14 days in jail. He appeals.

¶ 12 II. ANALYSIS

¶ 13 Defendant contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt. He argues that Stransky was not engaged in an authorized act after defendant told him to leave and that he did not impede the investigation.

¶ 14 A reviewing court will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). On a challenge to the sufficiency of the evidence, " 'the relevant question 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.' " (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This standard applies regardless of whether the evidence is direct or circumstantial, and circumstantial evidence meeting this standard is sufficient to sustain a criminal conviction. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). The mere existence of conflicts in the evidence does not by itself require reversal, and the resolution of the conflicts in the evidence and the credibility of the witnesses is the province of the trier of fact. *People v. Ellzey*, 96 Ill. App. 2d 356, 358-59 (1968).

¶ 15 Defendant was convicted of violating section 31-1(a) of the Criminal Code of 2012, which provides that one 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 2012). Relying on *People v. Jones*, 2015 IL App (2d) 130387, ¶ 11, defendant first contends that, absent consent, a warrant, probable cause, or exigency, Stransky was not performing an authorized act.

¶ 16 An, "authorized act" is an act of a type that an officer is authorized to perform. *Id*. An officer's entry into a defendant's home in violation of the fourth amendment is not an "authorized act" for purposes of section 31-1(a), even if the entry is undertaken pursuant to an official investigation. *Id*. However, voluntary consent to the entry is an exception to the fourth amendment's warrant requirement. *People v. Davis*, 398 Ill. App. 3d 940, 956 (2010). Consent is valid when obtained from the person whose property is to be entered or from a third party who has common authority over the property. *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990). A co-occupant, however, can invalidate the consent given by another occupant if he or she is present and expressly objects to the entry. *Randolph*, 547 U.S. at 106. But while a co-occupant may invalidate another occupant's consent when the police are entering to search for evidence, a co-occupant's withdrawal of consent does not preclude officers from investigating cases of potential domestic violence. *Id*. at 118-19.

¶ 17 In *Jones*, an officer responded to a 911 call reporting a domestic dispute. When the officer arrived, he saw the defendant and a woman arguing on an enclosed front porch. After identifying himself, the officer opened the front-porch door, advised that he was there to investigate a domestic disturbance, and asked if there was a problem. The defendant informed him that there was no problem and that the officer needed to leave. However, the officer did not

leave and, after a confrontation, in which the woman involved also became combative toward the officer, the defendant was arrested for obstructing a peace officer. On appeal, we held that the officer's remaining on the porch violated the fourth amendment because the defendant had assured him that there was no problem, the officer saw that the woman was not injured, and the woman did not request assistance. *Jones*, 2015 IL App (2d) 130387, ¶ 15. Thus, the officer's authority to remain on the porch had ended. *Jones*, 2015 IL App (2d) 130387, ¶ 16.

¶ 18 While defendant argues that *Jones* applies, neither he nor the State discusses the effect of *Randolph*, which the trial court applied when denying defendant's motion for a directed finding. There, the Supreme Court emphasized that, while a co-occupant can invalidate another occupant's consent when the police are entering a residence to search for evidence, that rule had no bearing on the capacity of the police to protect domestic violence victims. *Randolph*, 547 U.S. at 118. The Court specifically noted that no question could be raised about the authority of the police to enter a dwelling to protect a resident from domestic violence and that it would be silly to suggest that the police would commit a tort by entering to determine whether violence had just occurred or was about to occur, however much a cotenant objected. *Id*.

¶ 19 Here, while defendant argues that Stransky's presence became unauthorized when defendant asked Stransky to leave, there is a key distinction between this case and *Jones*. *Jones* did not involve a co-occupant's consent or cooperation. In contrast, here, the officers were responding to a call of possible domestic violence and were attempting to speak to witnesses with the consent of those witnesses. While defendant asked the officers to leave, his girlfriend, who also lived at the residence, did not. According to Stransky, defendant's girlfriend told defendant to shut up when he was disrupting Stransky's questioning of her. She thus indicated a desire to speak to the officer and a disagreement with defendant's request that the officers leave.

Thus, defendant's withdrawal of consent was irrelevant given that the officers were not there to search for evidence against defendant and were instead investigating a domestic dispute by speaking to a co-occupant with her consent. Accordingly, the officers were engaged in an authorized act. See *City of Westland v. Kodlowski*, 828 N.W.2d 67 (Mich. Ct. App. 2010), rev'd in part on other grounds, *People of City of Westland v. Kodlowski*, 837 N.W.2d 285 (Mich. 2013) (holding that, under *Randolph*, withdrawal of consent was irrelevant to fourth amendment analysis when officers were responding to a domestic violence call and were not searching for evidence). Moreover, the officers were required by the Illinois Domestic Violence Act not only to obtain detailed information about the alleged incident precipitating the call, but to take the victim's statements as to any prior incidents of abuse. 750 ILCS 60/303(a) (West 2012). If the officers had reason to believe that the victim had been abused, they were obligated to take measures to prevent further abuse, including referring her to an agency for services. 750 ILCS 60/304(a)(5) (West 2012). Even if no arrest was made, officers had the responsibility under the Act to, among other things, inform the victim of her right to meet with the State's Attorney's office regarding possible criminal prosecution. 750 ILCS 60/304(b)(2) (West 2012).

¶ 20 Defendant next contends that there was insufficient evidence that he materially impeded Stransky's investigation. The offense of obstructing a peace officer does not require proof of a physical act. *People v. Baskerville*, 2012 IL 111056, ¶ 23. In determining whether conduct constitutes an obstruction, the focus should be on whether the defendant actually obstructed the officers in performing their duties. *People v. Nasolo*, 2012 IL App (2d) 101059, ¶ 11. Whether that occurred is based on the facts and circumstances of each case. *Baskerville*, 2012 IL 111056, ¶ 23. Here, the evidence sufficiently supported the trial court's finding that defendant obstructed a peace officer. While there were conflicts in the evidence as to whether Stransky had completed

his investigation when defendant became disruptive, the court found credible Stransky's testimony that defendant's actions prevented Stransky from questioning the witnesses and completing his investigation. The court was entitled to do so. Thus, the court reasonably found that defendant actually obstructed Stransky in performing his duties.

¶ 21 III. CONCLUSION

¶ 22 The evidence was sufficient to prove defendant guilty beyond a reasonable doubt of obstruction of a peace officer. Accordingly, the judgment of the circuit court of Kane County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 23 Affirmed.