

**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).

2017 IL App (4th) 140903-U

NO. 4-14-0903

**FILED**  
March 28, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
OLGA L. BRAVO,	)	No. 13CM368
Defendant-Appellant.	)	
	)	Honorable
	)	Mark A. Fellheimer,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.  
Justices Steigmann and Knecht concurred in the judgment.

**ORDER**

¶ 1 Held: (1) The evidence was sufficient to support defendant's conviction for resisting a peace officer.

(2) The trial court committed no error in refusing to modify the jury instruction.

¶ 2 Following an April 2014 trial, a jury convicted defendant, Olga L. Bravo, of resisting a peace officer (720 ILCS 5/31-1(a) (West 2012)). Thereafter, the trial court sentenced her to 12 months' conditional discharge and 100 hours of community service. She appeals, arguing (1) the State failed to prove her guilty beyond a reasonable doubt of resisting arrest as alleged in the charging instrument and (2) she was deprived of a fair trial because the trial court declined to modify the jury instruction. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On August 6, 2013, defendant was charged by information with resisting a peace officer. *Id.* Specifically, the information alleged that on or about July 20, 2013,

"defendant knowingly resisted the performance of Sgt. James Morgan of an authorized act within his official capacity, being the arrest of the defendant, knowing Sgt. Morgan to be a peace officer engaged in the execution of his official duties, in that [s]he attempted to pull away from and struggled with Sgt. Morgan's attempts to handcuff said defendant."

¶ 5 On April 24, 2014, defendant's jury trial commenced. Sergeant James Morgan, a police officer with the Pontiac police department, testified for the State as follows. On July 20, 2013, he went to the apartment of Edy Salguero, who shared a child with defendant, to serve an arrest warrant on defendant for her failure to appear on a traffic ticket. He was familiar with defendant and observed her car parked outside of Salguero's apartment. Sergeant Morgan was dressed in his uniform when he walked into Salguero's apartment and saw defendant "[o]n the far side of the living room." Sergeant Morgan informed defendant that a warrant had been issued for her arrest for "driving while suspended." At that point, defendant started arguing with him. Defendant also began to "back up," and he was concerned she was going to "run to the back of the apartment." Sergeant Morgan told defendant he would like her to join him outside so he would not have to handcuff her in front of her child. He then walked across the living room to where defendant was. Sergeant Morgan explained, "I basically grabbed, with one hand, I grabbed her left arm and placed the handcuff on her left arm. And she did so, she wouldn't bring her right arm back to handcuff her and I had to struggle with her to pull her arm behind her and handcuff her." When asked if he used "a lot of force" when he handcuffed her, he replied, "[n]o

other force than what I would normally use in handcuffing. I had to pull on her right arm to get it back, though."

¶ 6 The prosecutor then asked Sergeant Morgan, "[a]t any point did you have to use a lot of force?" He responded, "[l]ater, yes." At this point, defense counsel objected, arguing that Sergeant Morgan's testimony regarding events taking place after defendant was handcuffed was beyond the event of her arrest. The trial court overruled the objection, and Sergeant Morgan continued to testify as follows:

"[Defendant] refused to walk and I had to pull—grab her left upper arm and pull her along as she was not—she was dragging and not wanting to walk with me outside. Once we got outside the door, one—she slipped one of the handcuffs. I had to stop and again re-handcuff that one hand. And I had to again force her arm behind her to get the handcuff on her.

\* \* \*

\*\*\* I got her to sit in—I opened the door of the squad car, sat her inside and she continued to refuse to put her feet inside the squad car. She kept wanting to talk to me. I tried to, but it was just arguing. And so basically, I told her if she did not put her feet in the squad car, that I would roll her over on her side and put her feet inside the squad car."

When defendant still failed to comply, Sergeant Morgan "rolled her on her side and placed her feet inside the squad car and closed the door." According to Sergeant Morgan, defendant did not complain of her arm hurting until he began "pulling on her arm trying to lead her outside."

¶ 7 On cross-examination, Sergeant Morgan testified he was 6 feet 1 inch tall and "quite a bit taller" than respondent. He clarified his earlier testimony regarding respondent "back[ing] up" as he approached her to mean that she took "three or four" steps back. He stated respondent kept saying, "I want to ask a question," but he told her, "we are going to have to do this outside." It took him approximately 15 seconds to handcuff defendant. Sergeant Morgan again stated that defendant did not mention her arm hurt until he starting "pulling on her" to walk outside. He further testified he did not "double lock" the handcuffs initially, an act that prevents the cuffs from tightening further. On redirect examination, he stated that despite not double locking the handcuffs, he saw no evidence that they tightened and pinched defendant.

¶ 8 After the witness was excused, and outside the presence of the jury, the trial court revisited defense counsel's objection that Sergeant Morgan's testimony went beyond the event of the arrest. In the court's opinion, the arrest ended after defendant was recuffed outside the apartment. When the jury returned, the court issued a curative instruction to the jury, which stated:

"The court has stricken the testimony of Sgt. Morgan as to all events he stated occurred after he double locked the handcuffs on [defendant] outside as not relevant to your consideration of the charge in this case.

Accordingly, you are instructed to not consider in any way in arriving at your verdict the testimony of Sgt. Morgan as to any event he stated occurred after he double locked the handcuffs on [defendant]."

¶ 9 Edy Salguero testified for the defense with the aid of a Spanish-speaking interpreter. Salguero is defendant's husband, and they have one child together. He was at his apart-

ment on July 20, 2013, when the police knocked on his door. He answered the door and the officer asked if defendant was there. Salguero replied that she was and he called for her, telling her the police were there. He testified that defendant came into the front room and he turned around and saw the officer had taken out his handcuffs and was laughing. According to Salguero, the officer told defendant to "come outside" and, "I want to arrest you." Defendant asked the officer why, and then the officer "went and grabbed [defendant's] left arm" in front of their son. Salguero testified defendant told the officer her arm hurt and that she had a problem with her shoulder, but he stated "[i]t didn't matter to him. He twisted around and lifted her. And he put the handcuff on her. Then he grabbed the other arm \*\*\* and dragged her out." According to Salguero, defendant was not struggling with the officer, but "she couldn't walk because he had lifted her. Her feet were kind of dangling. She couldn't put them on the floor to walk. And then he just took her outside like that."

¶ 10 Defendant testified on her own behalf. She stated that on the morning of July 20, 2013, she was in the bathroom at Salguero's apartment when she heard a knock on the apartment door, and then Salguero told her the police were looking for her. She did not understand why the police were looking for her. She walked to the living room, where she saw Sergeant Morgan in his uniform, standing with handcuffs in his right hand. Sergeant Morgan told her he had a warrant for her arrest. She was confused and asked him to explain. He then "came at her" and she "backed up" "one or two steps." She then turned to Salguero and told him to get her wallet, and "before [she] knew it, \*\*\* Sgt. Morgan grabbed [her] left arm and handcuffed [her]." Defendant testified that her left arm hurt when Sergeant Morgan pulled it behind her back because she had a rotator cuff injury. She "believe[d she] screamed out in pain" and asked him to be careful. He

then cuffed her other hand and "started to push [her] out the door." Defendant stated she was unable to get her footing because Sergeant Morgan "had my arm behind [my] back so high, I couldn't touch the ground." She asked him to slow down so she could get her footing, but he did not. She did "the best [she] could to walk along side of him." Defendant further testified that Sergeant Morgan had her hand "pulled up so high that [her right] slipped out of [the handcuff]." According to defendant, Sergeant Morgan's face got "really red" and he cuffed her again. Defense counsel asked defendant whether she struggled with Sergeant Morgan in any way up to the time he handcuffed her the second time. She responded, "I struggled in the way that I could not walk. I couldn't stand up. And I felt that he was carrying me. Did I struggle as far as against him? No I did not." The defense rested.

¶ 11 The State then called Sergeant Morgan as a rebuttal witness. On rebuttal, Sergeant Morgan testified that he could lift approximately 100 pounds with one arm. He further stated respondent's behavior while in the living room was "argumentative and uncooperative."

¶ 12 During the jury instruction conference, the State tendered an instruction which was based on Illinois Pattern Jury Instructions, Criminal, No. 22.14 (4<sup>th</sup> ed. 2000) (hereinafter, IPI Criminal)), which stated:

"To sustain the charge of resisting a peace officer, the State must prove the following propositions:

*First Proposition:* That Sgt. James Morgan was a peace officer; and

*Second Proposition:* That the defendant knew Sgt. Morgan was a peace officer; and

*Third Proposition:* That the defendant knowingly resisted the perfor-

mance by Sgt. Morgan of an authorized act within his official capacity."

Defense counsel requested that the trial court give a modified instruction, which stated, in relevant part, "[t]hat the defendant knowingly resisted the performance by Sgt. Morgan of an authorized act within his official capacity, by attempting to pull away from and struggling with Sgt. Morgan's attempts to handcuff the defendant." The court denied defense counsel's request for the modified instruction.

¶ 13 During the State's closing argument, the jury was shown a slide that suggested the jury consider defendant's actions "all the way to the car." Following an objection, the trial court instructed the jury not to consider the slide.

¶ 14 During deliberations, the jury requested the transcript of defendant's testimony regarding her stepping back and turning away from Sergeant Morgan. Over defense counsel's objection, the trial court responded, "No, you have all the evidence and the instructions. Please use your combined memories." Thereafter, the jury found defendant guilty of resisting a peace officer.

¶ 15 On May 23, 2014, defendant filed a posttrial motion, alleging (1) the jury was allowed to find defendant guilty of an uncharged offense; (2) substantial jury instruction errors required a new trial; (3) the court erred in failing to provide the jury with a transcript of defendant's testimony; and (4) the evidence was insufficient to prove defendant guilty of the charged offense beyond a reasonable doubt.

¶ 16 On July 7, 2014, defendant filed a "revised and supplemented" posttrial motion. In addition to the four allegations made in her initial posttrial motion, defendant also alleged that

the prosecution placed improper, inflammatory, and prejudicial matter before the jury during its opening statement, presentation of evidence, and closing argument.

¶ 17 Following a September 9, 2014, hearing, the trial court denied defendant's posttrial motion. It then sentenced her to 12 months' conditional discharge and 100 hours of community service.

¶ 18 This appeal followed.

## ¶ 19 II. ANALYSIS

¶ 20 On appeal, defendant argues (1) the State failed to prove her guilty beyond a reasonable doubt of resisting arrest as alleged in the charging instrument and (2) she was deprived of a fair trial because the trial court declined to modify the jury instruction.

### ¶ 21 A. Sufficiency of the Evidence

¶ 22 Defendant first argues the evidence was insufficient to prove her guilty beyond a reasonable doubt of resisting arrest. Specifically, she asserts the State failed to establish she "attempted to pull away from or struggle with the officer when he handcuffed her."

¶ 23 "When reviewing a challenge to the sufficiency of the evidence in a criminal case, the relevant inquiry is whether, when 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." *People v. Ngo*, 388 Ill. App. 3d 1048, 1052, 904 N.E.2d 98, 102 (2008) (quoting *People v. Singleton*, 367 Ill. App. 3d 182, 187, 854 N.E.2d 326, 331 (2006)). "The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence." *Id.* The testimony of a single witness, if positive and credible, is sufficient



to convict a defendant. *People v. Smith*, 185 Ill. 2d 532, 545, 708 N.E.2d 365, 371 (1999). "A court of review will not overturn the verdict of the fact finder 'unless the evidence is so unreasonable, improbable[,] or unsatisfactory that it raises a reasonable doubt of defendant's guilt.'" *Singleton*, 367 Ill. App. 3d at 187-88, 854 N.E.2d at 331 (quoting *People v. Evans*, 209 Ill. 2d 194, 209, 808 N.E.2d 939, 947 (2004)).

¶ 24 Section 31-1(a) of the Criminal Code of 1961 provides that "a person who knowingly resists or 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 official capacity commits a Class A misdemeanor." 720 ILCS 5/31-1(a) (West 2012). Merely arguing with a police officer is not sufficient to support a conviction for resisting a peace officer. *People v. Raby*, 40 Ill. 2d 392, 399, 240 N.E.2d 595, 600 (1968). Rather, a defendant's actions must entail "some physical act which imposes an obstacle which may impede, hinder, interrupt, prevent or delay the performance of the officer's duties, such as going limp, forcefully resisting arrest or physically aiding a third party to avoid arrest." *Id.*, (quoting *Landry v. Daley*, 280 F. Supp. 938, 959 (N.D. Ill.1968)). The act of resisting requires "some type of physical exertion in relation to the officer's actions." *People v. Baskerville*, 2012 IL 111056, ¶ 25, 963 N.E.2d 898. This court has explained, " [R]esisting arrest is a physical act that necessarily involves a physical struggle. It does not potentially involve the range of actions that obstructing a peace officer can involve." *People v. Meister*, 289 Ill. App. 3d 337, 343, 682 N.E.2d 306, 309 (1997) (quoting *People v. Lauer*, 273 Ill. App.3d 469, 474, 653 N.E.2d 30, 33 (1995)).

¶ 25 Further, "a complaint which charges resisting or obstructing a peace officer must sufficiently describe the physical acts which constitute the crime. [Citation.] The complaint

must set forth sufficient allegations regarding the 'authorized' act the officer was performing [citation] and sufficient allegations describing what physical act of the defendant constituted resisting or obstructing the peace officer." *People v. Hilgenberg*, 223 Ill. App. 3d 286, 289, 528 N.E.2d 180, 183 (1991).

¶ 26 As noted, the information in this case alleged that on or about July 20, 2013, "defendant knowingly resisted the performance of Sgt. James Morgan of an authorized act within his official capacity, being the arrest of the defendant, knowing Sgt. Morgan to be a peace officer engaged in the execution of his official duties, in that [s]he attempted to pull away from and struggled with Sgt. Morgan's attempts to handcuff said defendant."

Thus, the State had to prove that defendant knowingly resisted her arrest by a known peace officer engaged in the execution of his official duties by attempting to pull away from Sergeant Morgan and struggling against his attempts to handcuff her.

¶ 27 Defendant does not dispute that Sergeant Morgan was a peace officer engaged in his official duties at the time of her arrest. She argues only that the State failed to prove "she pulled away from or struggled [with Sergeant Morgan] as he handcuffed her" on either occasion.

¶ 28 Here, the record shows that after placing a handcuff on defendant's left wrist inside the apartment, Sergeant Morgan physically pulled defendant's right arm behind her back in order to handcuff her right wrist. Although Sergeant Morgan initially testified he "had to struggle with [defendant] to pull her arm behind her back," immediately thereafter, he stated he used "[n]o other force than what I would normally use in handcuffing" someone and that it took him approximately 15 seconds to handcuff defendant. Regarding the second attempt to handcuff de-

fendant, Sergeant Morgan testified that once they were outside, "[defendant] slipped one of the handcuffs. I had to stop and re-handcuff that one hand. And I had to again force her arm behind her to get the handcuff on her." He did not elaborate on the force he was required to use.

¶ 29 Based on our review of the evidence, the handcuffing process was of several minutes' duration and included two separate attempts by Sergeant Morgan to secure defendant's hands behind her. Sergeant Morgan testified that in between the two attempts, defendant struggled with him in that "she refused to walk and I had to \*\*\* grab her left upper arm and pull her along as she was \*\*\* dragging and not wanting to walk with me outside." Refusing to walk with an officer after being placed under arrest and having to be dragged along is certainly an act that impedes, hinders, interrupts, prevents or delays the performance of an officer's duties. See *Raby*, 40 Ill. 2d at 399, 240 N.E.2d at 600. Based on the above evidence, we find a rational trier of fact could have found defendant committed the offense of resisting a peace officer beyond a reasonable doubt.

¶ 30 B. Pattern Jury Instruction

¶ 31 Defendant next argues that "the trial court's refusal to modify the pattern [jury] instruction so that it alleged the charged acts of resistance with greater specificity deprived [her] of a fair trial." Specifically, she asserts the court should have modified the instruction to specify the conduct required to find she resisted arrest, *i.e.*, that she "attempt[ed] to pull away from and struggle[ed] with Sgt. Morgan's attempts to handcuff [her]." According to defendant, the modification "was necessary to prevent the jury from reaching a guilty verdict based on [her] verbal arguing, or other uncharged conduct."

¶ 32 "The purpose of jury instructions is to provide the jury with the correct legal prin-

ciples applicable to the evidence, so that the jury may reach a correct conclusion according to the law and the evidence." *People v. Bannister*, 232 Ill. 2d 52, 81, 902 N.E.2d 571, 589 (2008). "In a criminal case, the trial court is required to properly instruct the jury on the elements of the offense, the burden of proof, and the presumption of innocence." *People v. Lovejoy*, 235 Ill. 2d 97, 150, 919 N.E.2d 843, 872 (2009). Illinois Supreme Court Rule 451(a) (eff. Apr. 8, 2013) provides:

"Whenever [Illinois Pattern Jury Instructions Criminal,] contains an instruction applicable in a criminal case, giving due consideration to the facts and the governing law, and the court determines that the jury shall be instructed on the subject, the IPI Criminal instruction shall be used, unless the court determines that it does not accurately state the law."

"Generally, the decision to give certain jury instructions rests with the trial court, and that decision will not be reversed on appeal absent an abuse of that discretion. [Citation.] However, 'the issue of whether the jury instruction accurately conveyed to the jury the applicable law is reviewed *de novo*.'" *People v. Hale*, 2012 IL App (4th) 100949, ¶ 19, 967 N.E.2d 476, (quoting *People v. Parker*, 223 Ill. 2d 494, 501, 861 N.E.2d 936, 939 (2006)).

¶ 33 As noted, the trial court in this case gave the following instruction:

"To sustain the charge of resisting a peace officer, the State must prove the following propositions:

*First Proposition:* That Sgt. James Morgan was a peace officer; and

*Second Proposition:* That the defendant knew Sgt. Morgan was a peace officer; and

*Third Proposition:* That the defendant knowingly resisted the performance by Sgt. Morgan of an authorized act within his official capacity."

This instruction conformed to IPI Criminal No. 22.14 and accurately stated the law by informing the jury of the elements of the offense the State was required to prove. The court's refusal to modify the instruction was not error and did not result in the denial of a fair trial.

¶ 34

### III. CONCLUSION

¶ 35 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 36 Affirmed.