

2018 IL App (1st) 161251-U

No. 1-16-1251

Order filed December 17, 2018

First Division

**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 DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 12 CR 12642
	)	
JAMES CHAVES,	)	Honorable
	)	Gregory Robert Ginex,
Defendant-Appellee.	)	Judge, presiding.

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JUSTICE PIERCE delivered the judgment of the court.  
Presiding Justice Mikva and Justice Griffin concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's conviction for the Class 4 felony of resisting a peace officer, which was the proximate cause of an injury to the peace officer, will not be reduced to the Class A misdemeanor of resisting a peace officer, despite defendant's contention that the act which proximately caused the officer's injury was not a knowing act of resistance and was merely negligent or reckless.

¶ 2 Following a bench trial, defendant James Chaves was found guilty of nine counts of aggravated battery of a peace officer (720 ILCS 5/12-3.05(d)(4) (West 2012)) and one count of resisting a peace officer which was the proximate cause of an injury to the peace officer (720

ILCS 5/31-1(a-7) (West 2012)).<sup>1</sup> After the trial court merged the counts, defendant was sentenced on three counts of aggravated battery to concurrent terms of four years' imprisonment and a concurrent term of two years' imprisonment for felony resisting a peace officer which was the proximate cause of an injury to the peace officer. Defendant appeals the felony resisting a peace officer conviction. He contends that the act which caused the injury to the peace officer, *i.e.*, falling down a flight of stairs, was at worst a negligent or reckless act, and was not an act of knowing resistance. Defendant argues that his conviction should be reduced to the Class A misdemeanor offense of resisting a peace officer (720 ILCS 5/31-1(a) (West 2012)). We affirm.

¶ 3 The charges in this case arose from what was described at trial as a melee involving multiple offenders and a group of police officers attempting to effectuate arrests. The incident occurred on the back stairwell of a three-unit apartment building and began when a police officer attempted to arrest a suspected gang member for a curfew violation. According to the State's theory of the case, defendant, his mother, and others battered police officers in an effort to prevent the arrest and resisted police as they became subjects of their own arrest. Defendant and his mother, Myriam Forero-Gomez, were charged in a 20 count indictment.<sup>2</sup> Relevant to this appeal is count 19, which alleged that defendant resisted the performance of an authorized act by Officer Schauer, a known peace officer, and proximately caused an injury to him.

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<sup>1</sup> Defendant is referred to throughout the record as both James Chaves and James Chavez. At trial, defendant's brother Anderson Chaves testified that his name is spelled with an "s," but that people "sometimes" spell it with a "z." We use the spelling of defendant's name used in the indictment and explained by his brother.

<sup>2</sup> Forero-Gomez was tried simultaneously with defendant and convicted of six counts of aggravated battery of a peace officer and one count of resisting a peace officer. She has an appeal pending, no. 1-16-1245.

¶ 4 Defendant does not challenge the nine findings of guilt for aggravated battery or the three convictions resulting therefrom. Accordingly, we will narrow our recitation of the evidence to the facts relevant to defendant's challenge to the felony resisting charge contained in count 19.

¶ 5 At trial, Berwyn police detective Charles Schauer testified that, on June 12, 2012, he responded to the area of 18th Street and Gunderson Avenue in Berwyn. He was wearing a police uniform and bullet resistant vest. When he arrived, he observed a small crowd of people. A man had suffered some kind of head injury and was bleeding profusely. Berwyn paramedics had already arrived and were treating the man. Schauer identified defendant in court as one of the people standing nearby.

¶ 6 Schauer learned the injured man was Anthony Almarez and that he had been struck with some type of weapon during a gang altercation. Schauer heard defendant tell others that "it was the SD's who did this," and recognized SD as a reference to the Satan Disciples street gang. Schauer approached defendant and advised him to disperse from the area. Schauer was worried about retribution and hoped to avoid additional violence. Defendant was holding a red cup with some kind of beverage, and smelled of alcohol.

¶ 7 Among the people standing on the street were two juveniles later identified as Mark Nevarez and Anderson Chaves (Anderson).<sup>3</sup> Schauer knew that defendant lived at the intersection of 18th and Gunderson. The two juveniles indicated that they lived approximately two blocks to the east. Although Schauer told them to go home, he saw them walk through a gangway at defendant's building on 18th Street. Schauer advised Officer Carl Gray that the two

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<sup>3</sup> As Anderson Chaves shares the same last name with defendant, we will refer to him by his first name.

juveniles had not left the area but were circling back around, and Gray began to walk toward the gangway.

¶ 8 A short time later, Schauer heard Gray's voice in an interrupted radio transmission. He could not make out what Gray said, but it sounded like a struggle or commotion was occurring. Schauer ran through the gangway. He did not see anything in the gangway, but heard multiple people yelling. He ran toward the noise and entered a common stairway on the building. He saw Forero-Gomez standing at the base of the stairs looking up toward the first landing. On the landing, police officers Gray, Jesus Areizaga, and Thomas Garcia were struggling attempting to take defendant, Anderson, and Nevarez into custody. Schauer moved past Forero-Gomez and went up to the landing.

¶ 9 The three young men were "actively using muscle tension, pulling away from the officers, holding their arms underneath them to resist the officer's attempts to put handcuffs on them." Gray was attempting to put handcuffs on defendant. Areizaga was attempting to arrest Anderson against his resistance, and Garcia was attempting to take Nevarez into custody. Defendant was eventually taken into custody, and Schauer grabbed him by one arm to escort him to street level and a squad car. Schauer testified: "While doing so, [defendant is] continuing to resist. He's yelling at people who are up on the second landing. Yelling at them, trying to pull away from officers, which caused both me and him actually to fall forward down the stairs."

¶ 10 Schauer testified that, because defendant was handcuffed behind his back, he held onto defendant to control the fall. As they fell, Schauer scraped his elbow and rolled or sprained his left ankle. After they fell, Schauer walked defendant out to the gangway and turned him over to Officer Matt Burke. Defendant continued yelling profanities and pulling away.

¶ 11 The parties stipulated to the admission of a video taken of the incident in the stairwell. The video was played for the court and Schauer described the events depicted. Approximately 27 seconds into the 63-second video, Schauer testified that the video depicted him and defendant falling. Schauer testified that “[a]s I was trying to walk the defendant down the stairs, he pulled from me causing both of us to fall. I did my best to maintain positive control of him.” Defendant then turned to Schauer and said “you a bitch.” Schauer identified the other police officers in the video and noted that it did not depict the complete incident.

¶ 12 The video depicts a stairwell and multiple police officers arresting two individuals. Defendant is lying on the ground pulling his arms away from police officers. The officers stand defendant up and defendant can be seen standing on a landing with three officers behind him placing handcuffs on him. A female voice can be heard off camera saying “I am recording, don’t do nothing.” Defendant is looking up into the camera and can be heard saying “I’m not resisting arrest.” Approximately 27 seconds into the video, defendant can be seen falling out of the frame of the video followed by a police officer. After the fall, defendant and the officer leave the view of the camera.

¶ 13 During cross-examination, Schauer viewed the video again. Schauer did not observe defendant swearing at officers on the video. Schauer did not observe defendant kicking officers on the video. When asked why he fell down the stairs, Schauer replied, “because the subject was twisting and pulling away from me.” He stated, “[y]ou can actually see [on the video] me have to pull him along with me. He’s fighting me.”

¶ 14 Berwyn police detective Carl Gray testified that, on June 12, 2012, he was on patrol and dressed in a police uniform and vest. About 11:30 p.m., Gray responded to a battery call at 18th

and Gunderson. There he saw a young man with a head injury being treated by paramedics. Defendant spoke to the man and Gray heard them mention the Satan Disciples. Gray knew defendant was a member of the Latin Kings, a rival gang, and was concerned defendant might be planning some type of retaliation. Gray “dispersed” defendant from the area, asking where he lived and telling him to go home. Defendant was with other Latin Kings and Gray told them all to leave.

¶ 15 Gray testified that the curfew in Berwyn for those under 18 was 10:30 p.m. that day. There was a three-story apartment building located at the scene of the battery, and Forero-Gomez was yelling loudly out the window of the third floor apartment. Among other things, she yelled “James, come in the house.” Schauer told Gray that two young men, Nevarez and Anderson, were not leaving but were, instead, “circling back around.” Gray went behind the apartment building on 18th Street and stood outside a stairwell because he heard voices inside. The voices were discussing the Satan Disciples, and Gray feared they were planning retaliation for the battery.

¶ 16 When Nevarez exited the stairwell, Gray told him he was under arrest. Nevarez recoiled, pushed Gray away with his hand, and yelled “get your hands off me.” At this point, defendant came down the stairs and pulled Nevarez back into the stairwell. Defendant said “this is private property get the f\*\*\* out of here.” Gray told defendant he was under arrest also. Defendant and Nevarez began striking Gray in the upper torso with their hands. Gray made a radio call requesting assistance in the stairwell. Anderson and Forero-Gomez came down the stairwell and began struggling with Gray. Gray suffered scratches and bruises as a result of the struggle.

¶ 17 Gray reviewed the video of the incident. He testified the video starts while he is attempting to subdue defendant, but did not depict the beginning of their encounter.

¶ 18 Berwyn police officer Thomas Garcia testified that, on June 12, 2012, he was on patrol and received a call to go to 18th and Gunderson. While investigating a battery there, he heard raised voices and then heard Gray call for assistance over the radio. Garcia responded to the stairwell behind the building on 18th Street. His description of the struggle that occurred there was generally consistent with Gray and Schauer's accounts. Garcia added that, during the struggle, defendant punched him in the face with a closed fist. On cross-examination, Garcia testified that he did not know what caused Schauer to fall.

¶ 19 Berwyn police officer Matt Burke testified that, on June 12, 2012, while on patrol, he received a radio transmission from Gray asking for assistance near 18th and Gunderson. When Burke arrived, defendant was in the custody of Schauer. Defendant leaned forward and pulled out of Schauer's grip causing both of them to fall down the stairs. After they fell, Burke picked defendant up and escorted him out of the building. As they were leaving, defendant called Schauer a bitch and said "I got you." At the bottom of the stairs, defendant pulled out of Burke's grasp and fell to the sidewalk, injuring his face. Burke picked defendant up and saw him bleeding from the mouth. As Burke continued to escort defendant, he turned and spit blood into Burke's face. Defendant said "I've got [AIDS]. How do you like that m\*\*\*." Burke placed defendant on the ground to keep him from spitting again, and Sergeant Ramon Ortiz Jr. pulled defendant's t-shirt over his face so he could not spit on any other officers. Burke and Ortiz placed defendant in a squad car.

¶ 20 On cross-examination, Burke testified that “[i]t looked like [defendant] was pulling out of Officer Schauer’s grip.” Burke added that he believed defendant was acting intentionally. Burke denied throwing defendant to the ground and smashing his face because he was upset. Burke viewed the video and testified that he could see defendant pulling away from Schauer before they both fell.

¶ 21 Berwyn police sergeant Ramon Ortiz Jr. testified that he responded to a battery call. As he was arriving, he heard a call for assistance from Gray. Ortiz saw defendant spit on Burke and heard him say something about AIDS. Ortiz pulled defendant’s t-shirt over his head and escorted him to a squad car.

¶ 22 Yenifer Perez, defendant’s sister, testified that, on June 12, 2012, she heard her mother, Forero-Gomez, screaming from the back door of their third-floor apartment. She looked out the door and saw Anderson on the floor in the stairwell. She went back inside and retrieved a video camera. It took her about three seconds to retrieve the camera and another three seconds to begin recording.

¶ 23 Berwyn police officer Jesus Areizaga testified he responded to the battery call on June 12, 2012. While standing guard over a piece of suspected evidence, Areizaga heard a call for assistance from Gray. Areizaga entered the stairwell where Anderson spit on him and ran up the stairs. Areizaga chased and stopped him. Areizaga described his role in the struggle with defendant and the others, but testified he did not see Schauer fall down the stairs. On cross-examination, Areizaga explained: “I heard some rumbling on the stairs. Someone took a fall. I didn't know as to who until later on.”



¶ 24 Myriam Forero-Gomez testified and described the encounter with police on the stairwell. Forero-Gomez testified that she did not see an officer fall down the stairs because she was very nervous.

¶ 25 Anderson Chaves, defendant's brother, testified and described the encounter with police on the stairwell. He did not see defendant resist arrest. He did not see defendant pull away from the officer trying to arrest him, and did not see any officers fall down the stairs. On cross-examination, Anderson testified that he never saw anyone resist arrest, or spit at anyone.

¶ 26 Following closing arguments, the trial court found defendant guilty of nine counts of aggravated battery and one count of resisting a peace officer proximately causing injury to the peace officer. In making its finding, the trial court noted that it viewed the sixty-three second video 10 times in the course of case, and the video could not have captured the entire incident.

The court stated:

“[Defendant] is placed under arrest. The officer tells him to remain still. He apparently struggles with him. As they're on the stairwell, they both fall.

Officer Schauer says he held the defendant's hands. He kept control of the defendant so that they wouldn't fall into a plate glass window. And, in fact, when they fell, he, Officer Schauer, sprained his ankle.”

The court further commented:

“It is absolutely clear to me that what happened on that video was when the video starts playing and Miss Perez starts saying don't say nothing, I'm recording, [defendant] looks up at the video and is saying something, clearly doesn't watch where he's going,

and steps forward and falls. That's exactly what happened. Nobody pushed him. Nothing other than that happened.

He on his own, while looking at the video intently trying to say I'm not doing anything, steps off the step and falls. That's what causes Officer Schauer to fall as well."

It concluded "Schauer fell and injured himself as a result of the defendant resisting."

¶ 27 Defendant filed a posttrial motion. During argument on the motion, defendant played the video for the court on "the big screen," stopping and starting it to point out what it showed. He argued, *inter alia*:

"He complies with the officer, puts his hands behind his back and he's being handcuffed and he's talking to his sister who's saying, don't say anything. Just wait. I'm recording. Don't cause any trouble. And while he's looking at them, you can see the officer starts to take him—starts to walk down the stairs with him, and he falls down the stairs. How is this an aggravated battery of a police officer? He fell.

There was no intent to strike the officer. The officer pulled him. He was on the edge of the thing already, and he fell and the officer went down with him. It's quite clear. Yet your Honor found that that act, that act—we'll look at it. \*\*\* I just don't see how that's possible, Judge. He doesn't do anything."

¶ 28 The trial court denied defendant's motion, finding as relevant here:

"Mr. Chavez is on the stairs. And, again, it is also clear to me from the time I first saw the video up until today, it is clear, he is being escorted down by Officer Schauer, and at that point he doesn't batter Officer Schauer. That is not what the battery is from. But it is clear he is so intent in looking at his sister up on the landing who is recording that he

doesn't see the step, and that's what causes them to fall. There is no doubt that that's exactly what the evidence shows.”

The court heard argument on sentencing. After merging aggravated battery counts, the trial court sentenced defendant to three concurrent terms of four years' incarceration for aggravated battery and a concurrent term of two years' incarceration for felony resisting a peace officer. The trial court awarded defendant 715 days of presentencing custody credit. Defendant timely appealed.

¶ 29 Defendant acknowledges that the State presented sufficient evidence to prove him guilty of Class A misdemeanor resisting arrest. Defendant also acknowledges that there was sufficient evidence to prove that his fall down the stairs was the proximate cause of Schauer's injury. However, defendant contends that the State failed to prove that his fall down the stairs was an act of knowing resistance to or obstruction of an authorized police act.

¶ 30 When a defendant challenges the sufficiency of the evidence, we apply the standard set forth in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979), and we must determine 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.*; see also *People v. Harris*, 2018 IL 121932, ¶ 26. Under this standard, the trier of fact remains responsible for resolving conflicts in the testimony, weighing the evidence, and drawing reasonable inferences from the facts presented. *Harris*, 2018 IL 121932, ¶ 26. We will not retry the defendant, and will reverse a conviction only when the evidence is so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *Id.*

¶ 31 Defendant was charged with resisting or obstructing a peace officer. Section 31-1 of the Criminal Code of 2012 provides:

“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 or her official capacity commits a Class A misdemeanor.” 720 ILCS 5/31-1 (a) (West 2012).

The offense is elevated to a Class 4 felony if the “violation was the proximate cause of an injury to a peace officer.” 720 ILCS 5/31-1 (a-7) (West 2012).

¶ 32 The principle of proximate cause applies equally to criminal and analogous civil cases involving injury or death. See *People v. Cervantes*, 408 Ill. App. 3d 906, 909 (2011) (citing *People v. Hudson*, 222 Ill. 2d 392, 401 (2006)). Proximate cause describes two distinct requirements, cause in fact and legal cause. *Id.* Cause in fact is a universal factor common to all legal liability. *Id.* Legal cause is essentially a question of foreseeability. *Id.* “[T]he relevant inquiry is ‘whether the injury is of a type that a reasonable person would see as a likely result of his or her conduct.’ ” *Hudson*, 222 Ill. 2d at 401 (quoting *First Springfield Bank and Trust v. Galman*, 188 Ill. 2d 252, 258 (1999)). Where it is reasonably foreseeable that some injury might occur from an act, the exact manner in which the injury occurs or type of injury need not be foreseeable. See *Moran v. Lala*, 179 Ill. App. 3d 771, 784-85 (1989). For example, in *Cervantes*, 408 Ill. App. 3d 906 (2011), the reviewing court found that it was reasonably foreseeable that a police officer would slip, fall, and be injured when the defendant chose to run from police following a traffic stop during icy and snowy weather. *Id.* at 909.

¶ 33 Here, defendant concedes that his fall down the stairs was the proximate cause of Schauer’s injuries. He argues, however, that his fall was not a knowing act of resistance to Schauer, but was rather negligent or, at worst, reckless. We disagree. There was ample evidence

that defendant was knowingly resisting Schauer when the fall occurred. Schauer testified that defendant was pulling away and twisting in his grasp immediately prior to their fall down the stairs. Burke corroborated Schauer's testimony stating that defendant leaned forward and pulled out of Schauer's grasp. The testimony of even a single eyewitness is sufficient to convict if the witness is credible. See *People v. Petermon*, 2014 IL App (1st) 113536, ¶ 30.

¶ 34 Although defendant argues that the video does not support the officer's testimony regarding the cause of the fall, we have viewed the video and cannot agree that the video makes the evidence as a whole improbable or unsatisfactory. More importantly, the trial court viewed the video 10 times and did not agree with defendant's conclusion regarding the cause of the fall. It was the trial court's role, as the trier of fact, to resolve any conflicts in the evidence, and we will not retry defendant on appeal. See *Harris*, 2018 IL 121932, ¶ 26.

¶ 35 Defendant argues that the trial court's comments, including that "[Defendant] looks up at the video and is saying something, clearly doesn't watch where he's going, steps forward and falls," indicate that it found defendant's fall down the stairs was an accident. He contends the comments show the trial court may have "misunderstood the requirements of the statute and the concept of proximate cause or simply erred." However, the trial court is presumed to know the law, including the applicable *mens rea* requirements and burdens of proof, and apply it properly absent a strong affirmative showing to the contrary in the record. See *People v. Joiner*, 2018 IL App (1st) 150343, ¶ 70.

¶ 36 Although defendant identifies some isolated comments during the trial court's recitation of the evidence presented that suggest the fall was an accident, we conclude that these comments fall far short of demonstrating a misunderstanding of the law. To the contrary, read in context,

the trial court's comments merely reflect a lengthy recitation of the facts presented and careful evaluation of that evidence against the proper burden of proof. Moreover, defense counsel raised nearly identical arguments posttrial while replaying the video repeatedly on "the big screen," giving the trial court ample opportunity to correct any misunderstanding of the law or misapprehension of the facts. The trial court rejected those arguments at the posttrial stage of the proceedings and we likewise reject them on appeal. It was reasonably foreseeable that struggling with police officers in tight quarters on a set of stairs would lead to someone falling down the stairs. Whether defendant and Schauer fell down the stairs while defendant was trying to stay in front of the camera or because he was attempting to wiggle out of Schauer's grasp, the fall occurred because he was not going down the stairs with the officer as directed. Therefore, we affirm defendant's conviction for felony resisting or obstructing a peace officer.

¶ 37 Affirmed.