2026 IL App (4th) 250808

NO. 4-25-0808

FILED
August 25, 2026
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Hancock County
BRENT W. TRIPP,	)	No. 23CM38
Defendant-Appellant.	)	
	)	Honorable
	)	Rodney G. Clark,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court, with opinion.
Justices Knecht and Grischow concurred in the judgment and opinion.

OPINION

¶ 1 Following a June 2025 bench trial, the trial court convicted defendant, Brent W. Tripp, of misdemeanor resisting or obstructing a peace officer (720 ILCS 5/31-1(a) (West 2022)) in connection with allegations he damaged property and then fled from law enforcement officers. On appeal, defendant argues (1) the State was required, under section 31-1(d) of the Criminal Code of 2012 (Code) (*id.* § 31-1(d)), to prove beyond a reasonable doubt the officers who arrested him had probable cause to believe he committed the underlying offense for which he was subject to arrest and (2) the State failed to prove probable cause beyond a reasonable doubt. We hold the State does not have the burden to prove beyond a reasonable doubt a defendant was subject to an underlying offense. Accordingly, we affirm.

¶ 2 I. BACKGROUND

¶ 3 The State charged defendant with criminal damage to property (*id.* § 21-1(a)(1))

and resisting or obstructing a peace officer (*id.* § 31-1(a)). The State alleged that, on May 27, 2023, defendant knowingly damaged Internet cables owned by Mediacom at the residence of Patricia Mattews and then fled from officers who had attempted to arrest him. The State dismissed the charge of criminal damage to property before trial.

¶ 4 At trial, Jordyn Smith testified she was Mattews's neighbor and caregiver at the time of the charged offense. On that date, Mattews called Jordyn, and Jordyn went to Mattews's home to investigate whether Mattews's Mediacom box had been broken into. Jordyn discovered a lock on the box was broken, and she called law enforcement. While on the phone with law enforcement, Jordyn saw defendant, who lived across the street, place a block of wood between a water post and a garbage can outside of Mattews's home. Defendant then returned to his yard. Jordyn did not witness defendant do anything else.

¶ 5 Kaylan Wallace, a sheriff's deputy, testified she responded to the call about damage to the Mediacom box. Wallace stated Jordyn and Mattews reported defendant was in Mattews's yard tampering with the Mediacom box. Defense counsel objected based on hearsay. The State told the trial court, "[T]he line of questioning is not in association with whether or not he had committed any crimes but for why they were in fact responding." The court allowed the testimony based on the State's assertion it was not offering the statement for the truth of the matter asserted.

¶ 6 Wallace looked at the Mediacom box and found wires had been pulled from it. She testified the same thing had happened a few days prior, and Mediacom had come out and reconnected the wires. Wallace identified a photograph of Mattews's water meter with a block of wood by it. Wallace then went with other law enforcement officers to defendant's home and spoke with him in his yard. Wallace testified defendant admitted placing the block by Mattews's water meter but denied tampering with the Mediacom box.

¶ 7 Wallace stated the officers believed they had probable cause to arrest defendant. When told he was going to be arrested, defendant pulled away from the officers and ran away, yelling, "[U]nlawful arrest," and asking for help. After defendant led several officers on a chase through the neighborhood, officers were able to arrest him after an officer performed a "warning arc" with a taser.

¶ 8 On cross-examination, Wallace stated she believed there was probable cause to arrest defendant on charges of criminal damage to property, disorderly conduct, resisting arrest, and obstructing service meters. She clarified the service meter that was obstructed was the Mediacom box, which was a service meter because it provided Internet service. Wallace agreed the block by the water meter did not alter or change it. She testified defendant had not been told he could not go onto Mattews's property.

¶ 9 Another sheriff's deputy, Joshua Smith, testified he also responded to the call. He stated it had been reported a Mediacom box had been tampered with, and the person who called believed defendant had done the act. The caller said she saw defendant leave the property. When officers confronted defendant, defendant told them he believed the water meter was giving off radio frequencies, so he put the block of wood on it. Joshua corroborated Wallace's testimony regarding defendant's flight from arrest.

¶ 10 A sheriff's patrol deputy, Ben Schweizer, testified and corroborated the previous testimony about defendant's flight from arrest. He did not testify about the Medicom box. The State then rested.

¶ 11 Defense counsel moved for a directed finding, noting a recent addition to section 31-1(d) of the Code, which states, "A person shall not be subject to arrest for resisting arrest under this Section unless there is an underlying offense for which the person was initially subject to

arrest." *Id.* § 31-1(d). Counsel argued the State had failed to prove there was probable cause for the underlying offense. The State argued there was at a minimum probable cause of disorderly conduct based on defendant's act of placing the wood block on or next to the water meter.

¶ 12 The trial court denied the motion, stating:

> "Looking at the statute, I don't read it the same way that [defense counsel] reads it. It just indicates a person who knowingly resists an arrest. The officers in this case, whether they were correct or not, really doesn't affect Section (d).
>
> There were several underlying offenses, whether they were all charged or not, that's not up to them to decide. It's up to them to decide whether there's been some kind of violation of some kind of law. They placed him under arrest. And even under 720 ILCS 5/7-7 [(West 2022)], a person may not use force to resist arrest by a known peace officer, even if the arrest is unlawful. So it's even been codified that you can't—you can't use force. In this case, the force was the fact he ran away. So I'm going to deny the motion at this time."

¶ 13 The defense did not present any evidence, and the trial court found defendant guilty. Defendant moved for a new trial, arguing the court erred when it denied the motion for a directed finding. The court denied the motion and sentenced defendant to 16 days in jail.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant contends (1) the State was required, under section 31-1(d) of the Code, to prove beyond a reasonable doubt the officers who arrested him had probable cause to believe he committed the underlying offense for which he was subject to arrest and (2) the State failed to prove probable cause beyond a reasonable doubt. Defendant argues section 31-1(d) either

added an element to the offense of resisting arrest or created an exception or affirmative defense the State was required to negate. The State disagrees and also argues defendant failed to raise any issue concerning an affirmative defense.

¶ 17 Under section 31-1(a), a person who knowingly resists arrest 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. *Id.* § 31-1(a)(1)-(2). Section 31-1(c) provides an affirmative defense regarding resisting a firefighter if the person enters a building to rescue a person. *Id.* § 31-1(c).

¶ 18 Section 31-1(d) provides, "A person shall not be subject to arrest for resisting arrest under this Section unless there is an underlying offense for which the person was initially subject to arrest." *Id.* § 31-1(d). Subsection (d) was added to section 31-1 of the Code effective January 1, 2023. Pub. Act 101-652, § 10-215 (eff. Jan. 1, 2023); Pub. Act 102-28 (eff. June 25, 2021).

¶ 19 Meanwhile, section 7-7 of the Code provides,

> "A person is not authorized to use force to resist an arrest which he knows is being made either by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if he believes that the arrest is unlawful and the arrest in fact is unlawful." 720 ILCS 5/7-7 (West 2022).

Our supreme court has held that section 31-1 must be read in conjunction with section 7-7. *People v. Locken*, 59 Ill. 2d 459, 464 (1974).

¶ 20 At issue here is whether, under section 31-1(d), an underlying offense for which the person was initially subject to arrest is an element of the offense of resisting arrest or otherwise an affirmative defense or type of exception the State has an obligation to negate. The effect of the addition of section 31-1(d) is a matter of statutory construction. When interpreting a statute, our

primary objective is to ascertain and give effect to the legislature's intent. *People v. Wallace*, 2025 IL 130173, ¶ 12. The most reliable indicator of that intent is the statutory language itself, given its plain and ordinary meaning, and we may not depart from that language by reading in exceptions, restrictions, or conditions. *Id.* We review the interpretation of a statute *de novo*. *Id.*

¶ 21 Section 31-1(d) operates as an exception to the definition of the offense, which is stated in section 31-1(a). Generally, exceptions are mere matters of defense. *People v. Close*, 238 Ill. 2d 497, 508 (2010). "[I]n determining whether an exception to a criminal statute is an element to be proved by the State, we do not look solely at where the exception is positioned in the statute." *People v. Tolbert*, 2016 IL 117846, ¶ 15. Rather, "we must determine more generally whether the legislature intended the exception to be 'descriptive' of the offense or whether the legislature intended only to withdraw, or exempt, certain acts or persons from the operation of the statute." *Id.*

> "The general rule in Illinois is that where an act is made a crime and there are exceptions embraced in the enacting clause creating the offense which affect the description of that offense, the State must allege and prove that the accused does not come within the exception. In other words, where the exception is descriptive of the offense it must be negatived in order to charge the accused with the offense. On the other hand, if the exception rather than being a part of the description of the offense, merely withdraws certain acts or persons from the operation of the statute, it need not be negatived, and its position in the act, whether in the same section or another part of the act, is of no consequence. Such exceptions are generally matters of defense." *People v. Ellis*, 71 Ill. App. 3d 719, 720-21 (1979).

"Although an exception may appear within the statutory definition of an offense, it is part of the

body of the offense only if it is so incorporated with the language of the definition that the elements of the offense cannot be accurately described without reference to the exception." (Internal quotation marks omitted.) *People v. Rodgers*, 322 Ill. App. 3d 199, 202 (2001).

¶ 22 As to exceptions that create affirmative defenses, generally once an affirmative defense is raised, the burden is on the State to prove that issue, together with all other elements of the offense, beyond a reasonable doubt. *People v. Smith*, 71 Ill. 2d 95, 105 (1978). An affirmative defense fails if the State negates any one of the elements of the affirmative defense. *People v. Gray*, 2017 IL 120958, ¶ 50. When the legislature intends an exception be construed as an affirmative defense, historically, "it has labeled it as such." *Smith*, 71 Ill. 2d at 106.

¶ 23 Defendant's arguments have been rejected by the Illinois Appellate Court, First and Third Districts. See *People v. Carswell*, 2026 IL App (1st) 231884, ¶ 19, *appeal allowed*, No. 132938 (Ill. May 27, 2026); *People v. Hill*, 2026 IL App (3d) 250131, ¶ 16, *pet. for leave to appeal filed*, No. 133396 (Ill. July 14, 2026).

¶ 24 In *Carswell*, the defendant raised virtually the same arguments on appeal regarding the statutory interpretation of section 31-1(d) that defendant raises here. The *Carswell* court rejected arguments that section 31-1(d) was descriptive of the offense such that it added an element or created an exception or affirmative defense that must be negated by the State. The court also rejected an argument that statements in the legislative history showed an intent of the legislature for section 31-1(d) to add to the elements of the offense. *Carswell*, 2026 IL App (1st) 231884, ¶¶ 7, 12-18. The legislative history regarding the amendment that added section 31-1(d) includes the statement, "In regards to resisting arrest, the Bill requires a predicate offense to charge someone with resisting arrest. Please stop charging black folks for resisting arrest when there has not been a predicate offense." 101st Ill. Gen. Assem., House Proceedings, Jan. 13, 2021, at 7 (statements of

Representative Slaughter); Pub. Act 101-652, § 10-215 (eff. Jan. 1, 2023) (amending 720 ILCS 5/31-1).

¶ 25 In holding section 31-1(d) was not descriptive of the offense, the *Carswell* court found construing section 31-1(d) as an element or as an exception the State was required to negate would improperly add a provision or limitation to the statute the legislature did not include. *Carswell*, 2026 IL App (1st) 231884, ¶ 16. The court noted the legislature had previously demonstrated the ability to clearly and unambiguously express the effect of exceptions and affirmative defenses in other provisions of the Code. *Id.* ¶ 17. Thus, had the legislature intended section 31-1(d) to act as an exception the State was required to negate or as an affirmative defense, it could have used the same unambiguous language it had employed for other statutory exceptions throughout the Code. *Id.* In particular, section 31-1 itself illustrated the legislature's ability to clearly express its intent by expressly stating the provision of section 31-1(c) pertaining to firefighters was an affirmative defense. See *id.*

¶ 26 Additionally, the *Carswell* court noted our supreme court's holding in *Locken* that section 31-1 must be read in conjunction with section 7-7 of the Code. *Id.* ¶ 18 (citing *Locken*, 59 Ill. 2d at 464). The court stated, "Instead of an additional element, exception, or defense, subsection (d) merely makes an arrest for resisting arrest without a predicate offense unlawful. This does not give rise to an exception or defense, however, because the law does not permit a person to resist an unlawful arrest." *Id.*

¶ 27 Under section 7-7 as interpreted by *Locken*, "resistance of even an unlawful arrest by a known officer is a violation of section 31-1." *Locken*, 59 Ill. 2d at 465. The *Carswell* court observed the legislature had not amended section 7-7 to remove that provision, and the court presumed the legislature was aware of *Locken* when it amended section 31-1. *Carswell*, 2026 IL

App (1st) 231884, ¶ 19. Applying *Locken*, the court further stated:

> "The rationale underlying this rule is 'the importance of allowing police the ability to effectively perform their duties, without interference from citizens resorting to self-help remedies. In our society, courts determine whether the police have exceeded their power, and if so, remedies are made available to those individuals harmed.' [Citation]. To construe subsection (d) as an element, exception, or affirmative defense would undermine this policy and effectively permit persons to resort to self-help in contravention of section 7-7 in some circumstances." *Id.* ¶ 18

¶ 28 In *Hill*, the Appellate Court, Third District, also addressed the same arguments defendant raises on appeal and agreed with *Carswell*. *Hill*, 2026 IL App (3d) 250131, ¶¶ 15-16. In addition, this court, albeit in *dicta*, has expressed disagreement with the argument section 31-1(d) requires the State to prove beyond a reasonable doubt the defendant was subject to arrest due to an underlying offense. *People v. Walston*, 2025 IL App (4th) 241234, ¶ 43. In doing so, this court stated:

> "Consider the following hypothetical: a warrant is issued, and a police officer attempts to execute it. While making the attempt, a suspect indisputably resists arrest, perhaps going as far as to engage in a physical struggle with the officer. Eventually, the suspect is apprehended. Later, it is revealed that the warrant lacked a legitimate basis for its issuance. Under counsel's interpretation of subsection (d), the suspect has not committed the offense of resisting arrest, despite engaging in a physical struggle with an officer attempting to serve a warrant, because the State will not be able to prove the legitimacy of the underlying warrant at trial." *Id.*

However, this court also stated, "[W]e do not seek now to divine what the legislature intended in

drafting subsection (d)" because this court found it did not apply in the case. *Id.* ¶ 44.

¶ 29 We agree with the reasoning of *Carswell*. We first agree section 31-1(d) is not descriptive of the offense. While not dispositive, the provision is listed separately from the definition of the offense. Thus, it does not clearly add to the description to the offense. Then, the provision merely withdraws those without an underlying offense from operation of the statute. Thus, the provision is not so incorporated with the language of the definition of the offense that the elements of the offense cannot be accurately described without reference to the exception. As such, section 31-1(d) did not add an element to the offense or create an exception the State was required to negate. Instead, it was a matter of defense. We further agree with *Carswell* that, had the legislature intended such an effect, it could have included language expressly doing so, as it has done on other occasions.

¶ 30 Section 31-1(d) also did not create an affirmative defense. In contradiction to the legislature's historical practice, nothing labels it as such. Further, section 31-1(c) specifically identifies an affirmative defense applicable to resisting firefighters, yet section 31-1(d) does not, showing the intent that section 31-1(d) does not create an affirmative defense. Had the legislature intended the provision to create an affirmative defense, it could have easily included such a provision.

¶ 31 Moreover, under section 7-7 and *Locken*, "resistance of even an unlawful arrest by a known officer is a violation of section 31-1." *Locken*, 59 Ill. 2d at 465. The legislature did not amend section 7-7 when it added section 31-1(d). Thus, it remains in effect. We observe our supreme court has granted leave to appeal in *Carswell*. See *Carswell*, 2026 IL App (1st) 231884, *appeal allowed*, No. 132938 (Ill. May 27, 2026). However, unless or until our supreme court revisits the issue, we are bound by the holding of *Locken* that section 31-1 must be read in

conjunction with section 7-7. Accordingly, we hold section 31-1(d) does not require the State to prove the underlying offense for the arrest or the existence of probable cause for the underlying offense beyond a reasonable doubt.

¶ 32 Because we conclude the State was not required to prove the underlying offense beyond a reasonable doubt, we need not and do not address whether it did so or whether defendant was required to raise the issue as an affirmative defense. See *id.* ¶ 20 (finding the defendant's remaining argument moot).

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the trial court's judgment.

¶ 35 Affirmed.

***People v. Tripp*, 2026 IL App (4th) 250808**

Decision Under Review:	Appeal from the Circuit Court of Hancock County, No. 23-CM-38; the Hon. Rodney G. Clark, Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Christopher McCoy, and Toni Lea Heniff, of State Appellate Defender's Office, of Elgin, for appellant.
Attorneys for Appellee:	Bobi Gail James, State's Attorney, of Carthage (Patrick Delfino, Edward R. Psenicka, and Max C. Boose, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.