Circuit Court for Anne Arundel Co
Case No. 02-K-14-002726

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1793

September Term, 2015

MARK NORMAN

v.

STATE OF MARYLAND

Graeff,
Kehoe,
Shaw Geter,

JJ.

Opinion by Graeff, J.

Filed: July 18, 2017

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A jury in the Circuit Court for Anne Arundel County convicted Mark Norman, appellant, of resisting arrest. The court sentenced appellant to three years, all but time served suspended.

On appeal, appellant contends that the evidence was insufficient to support his conviction. For the reasons set forth below, we disagree, and therefore, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On January 1, 2014, at 1:52 a.m., Corporal Lou Facciponti, a member of the Anne Arundel County Police Department, responded to a parking lot in response to a domestic violence call. Appellant was swearing and screaming at his girlfriend, Kayce Downs. He was "highly intoxicated," very agitated, and angry. Ms. Downs also was "highly intoxicated" and "cursing at" appellant and the officers.

Corporal Facciponti and Detective Brittany Eure attempted to defuse the conflict, telling appellant to lower his voice and "step away from Ms. Downs." They instructed appellant to go to the hotel room the couple had rented for the evening, which was within walking distance, while simultaneously making plans for Ms. Downs to return home. Appellant, however, continued to scream profanities for the entire time the police were attempting to mitigate the situation. He was "rude, refused to listen," ignored the officers' orders to quiet down and go to the hotel, and continued trying to speak to Ms. Downs and attempting to walk toward her.

Under the officers' supervision, appellant retrieved a bag from the trunk of the vehicle, and he began to walk toward the hotel. He then turned around and came back,

loudly cursing at Ms. Downs and the officers. After exchanging the bag he retrieved for another one in the trunk, appellant continued yelling at Ms. Downs as he walked backwards, eventually stepping into the outer lane of Riva Road. He stopped there, in the street, to continue his tirade. To avoid hitting appellant, vehicles had to slow, stop, or swerve around him. Then, instead of continuing toward his hotel, appellant again headed back toward Ms. Downs. At that point, Detective Eure decided to arrest him.

Telling appellant that he was under arrest, she pulled him out of the street and got a handcuff on one wrist. Appellant "stiffened up" and refused to comply with her orders to place both hands behind his back. As appellant was "escalating the situation," Corporal Facciponti came to Detective Eure's aid. Appellant continued wrestling with both officers, right near the street. To make the arrest, Detective Eure had to perform a "leg sweep" that forced appellant to the ground, where he continued to struggle until his other hand was cuffed. During this scuffle on the pavement, appellant sustained facial abrasions. When he arrived at the police station, he declined to go to the hospital, but he was "cleaned up" by paramedics.

Both appellant and Ms. Downs, who were still a couple at the time of trial, testified in appellant's defense. They denied consuming enough alcohol to render them intoxicated to the extent described by police, but they confirmed that their argument was loud and profane.

Appellant denied seeing any pedestrians or onlookers along Riva Road. He recounted that, after the officers intervened, he agreed to go back to the hotel alone. He initially took a shopping bag from the trunk, but he came back because he mistakenly had

grabbed the bag containing Ms. Downs' shoes. After briefly stepping into the road, he returned because Ms. Downs called out that he had her car key. Before he could deliver the key, however, Corporal Facciponti grabbed him, threw him to the ground, pinned him down, and kneed him in the face, causing injuries. Appellant kept asking why he was being arrested, but he did not get an answer.

Ms. Downs testified that she was driving her car that evening. As she approached their hotel, she pulled into the empty parking lot so they would not be arguing at the hotel. After the police arrived and made arrangements for the couple to go separate ways, she called out to appellant, causing him to return with her car key, which he handed to the male officer, who arrested him, saying: "I am tired of you."

The State argued in closing that appellant deliberately resisted a lawful arrest for disturbing the peace by hindering traffic on Riva Road, engaging in disorderly conduct, or both. Appellant argued that his brief obstruction of traffic was inadvertent, that he did not actually disturb anyone, that he did not use intentional or significant force to resist the arrest, and that he had the right to use such force to resist an unlawful arrest for which police lacked probable cause. The jury acquitted appellant of the underlying disturbance offenses but convicted him of resisting arrest.

DISCUSSION

Appellant contends that the evidence was insufficient to convict him of resisting arrest. This Court has explained the elements of the offense of resisting arrest as follows:

> The crime of resisting arrest was a common law offense in Maryland until codified in 2004. *Rich v. State*, 205 Md. App. 227, 239 (2012). The applicable statute, Md. Code (2012 Repl. Vol., 2013 Supp.), § 9-408(b) of

> the Criminal Law Article ("[CR]"), provides that "[a] person may not intentionally resist a lawful arrest." The elements of the crime that the State must prove are that: (1) a law enforcement officer arrested or attempted to arrest the defendant; (2) the arrest was lawful, and; (3) the defendant refused to submit to the arrest and resisted the arrest by force. *Rich*, 205 Md. App. at 240, 250. The purpose of criminalizing such behavior is "to protect police officers from the substantial risk of physical injury." *Id.* at 255.

DeGrange v. State, 221 Md. App. 415, 421 (2015) (parallel citations omitted). Appellant challenges the second and third elements of the offense, arguing that he did not resist the arrest by force and the arrest was unlawful.

When considering a sufficiency challenge, we determine whether, considering the evidence presented at trial 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.'" *Grimm v. State*, 447 Md. 482, 500 (2016) (quoting *Cox v. State*, 421 Md. 630, 656-57 (2011)). In doing so, we defer to the jury's evaluations of witness credibility, resolution of evidentiary conflicts, and discretionary weighing of the evidence, by crediting any inferences the jury reasonably could have drawn. *Id.* at 495.

This Court has held "that *both* a refusal to submit to lawful arrest *and* resistance by force or threat of force are necessary to commit the offense of resisting arrest in Maryland." *Rich*, 205 Md. App. at 250. *See also Williams v. State*, 435 Md. 474, 499 (2013) (noting "the requisite resistance-by-force element"). With respect to the third element of the offense, Maryland law provides that, if a warrantless arrest is not supported by probable cause, it is an unlawful arrest that may be resisted with reasonable

force. *Barnhard v. State*, 325 Md. 602, 610, 614 (1992); *Riggins v. State*, 223 Md. App. 40, 61-62 (2015).

I.

Use of Force to Resist Arrest

We address first appellant's argument that he did not resist arrest by use of force. In that regard, he asserts that, "[i]n the light most favorable to the State, [a]ppellant allegedly resisted arrest by moving his arm or arms in an attempt to prevent his other hand from being cuffed and/or by stiffening."

In *DeGrange*, this Court noted that "[t]he level of force required" to support a conviction of resisting arrest "is not high." 221 Md. App. at 421. We explained and applied that standard as follows:

> Although . . . "mere flight" from an arresting officer is not active conduct and does not supply the requisite force to sustain a conviction for resisting arrest, [in *Rich*], we pointed out, in *dicta,* that, for example, "when a person 'goes limp' in response to an officer's attempt to effectuate an arrest[,] courts have held that such conduct constitutes force for resistance purposes."
>
> In the matter *sub judice,* the arresting police officers testified that when they located appellant in the upstairs bedroom of [the] house, they asked her to stand and place her hands behind her back. When she refused, [the Officer] placed his hands on her arms to stand her up and place her in handcuffs, but she pulled her arms away from him. Each officer then attempted to grab one of appellant's arms and place it behind her back, during which attempt she fell forward onto the bed, fighting and struggling with the officers and attempting to pull her hands and arms away from them, and under her body. [The officer] testified that she continued to refuse to submit to the arrest, kicking and yelling. [Another officer] was then required to wrestle her arm behind her back to handcuff her.
>
> In short, there was a decided conflict in the testimony from the officers and appellant as to the force required to effect the arrest, which

> presented a quintessential jury question. It is "axiomatic that weighing the credibility of witnesses and resolving any conflicts in the evidence are tasks properly assigned to the factfinder." We agree with the jury that appellant's actions rose to the level of the amount of force required to sustain the conviction for resisting arrest.

Id. at 421-22 (citations omitted).

Here, Corporal Facciponti testified regarding what happened when Detective Eure attempted to arrest appellant:

> He physically resisted by not placing his hands behind his back. She physically told him – she verbally told him, you are under arrest, put your hands behind your back, he refused to do so. Officer Eure grabbed one of his hands. He stiffened up. He would not – would not comply. That is when I had to get involved because now it is – a situation where it is going to – he is escalating the situation. We were kind of wrestling with him standing up wrestling with him. And then at one point we all went to the ground.

Corporal Facciponti explained that they went to the ground because Detective Eure "did kind of like a leg sweep, trying to kick his legs out from under him to get him on the ground." Once on the ground, Corporal Facciponti and Detective Eure "struggl[ed]" with appellant for 20 to 30 seconds.

This evidence permitted a rational jury to conclude that appellant actively struggled against both officers. Under these circumstances, the evidence was sufficient to establish that appellant resisted the arrest with force.

II.

Lawfulness of Arrest

Appellant next contends that, even if he did resist arrest with force, he had the right to do so because there was no probable cause to arrest him. The State disagrees,

arguing that the evidence presented established probable cause to arrest appellant for any of three offenses: (1) willfully obstructing or hindering "the free passage of another" in a public street, in violation of CR § 10-201(c)(1); (2) acting in a disorderly manner that disturbs the public peace, in violation of CR § 10-201(c)(2); and (3) willfully failing to "obey a reasonable and lawful order" made by a police officer "to prevent a disturbance to the public peace," in violation of CR § 10-201(c)(3).[1]

As this Court has explained, the probable cause standard is a "'practical, nontechnical conception' that deals with 'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" *Bowling v. State*, 227 Md. App. 460, 468 (quoting *Maryland v. Pringle*, 540 U.S. 366, 370 (2003)), *cert. denied*, 448 Md. 724 (2016). We further noted:

> The test for probable cause is not reducible to precise definition or quantification. Finely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence . . . have no place in the [probable-cause] decision. . . . All we have required is the kind of fair probability on which reasonable and prudent [people,] not legal technicians, act. . . .
>
> In evaluating whether the State has met this practical and common-sensical standard, we have consistently looked to the totality of the circumstances. . . . We have rejected rigid rules, bright-line tests, and mechanistic inquiries in favor of a more flexible, all-things-considered approach. . . . Probable cause, we emphasized, is a fluid concept—turning

[1] Maryland Code (2016 Supp.) § 10-201(c)(3) of the Criminal Law Article ("CR") prohibits a willful failure "to obey a reasonable and lawful order that a law enforcement officer makes to prevent a disturbance to the public peace." Here, however, the State did not charge appellant with that offense, and the trial court did not instruct the jury regarding it.

> on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules.

Id. (quoting *Florida v. Harris*, 568 U.S. 237, 243-44 (2013)).

CR § 10-201(c)(1) provides that "[a] person may not willfully and without lawful purpose obstruct or hinder the free passage of another in a public place or on a public conveyance." Here, both officers testified that, for a period of ten to fifteen minutes, appellant loudly cursed at Ms. Downs and descriptively accused her of infidelity. At one point, he stood in the middle of Riva Road, bringing a "[f]airly decent amount of traffic" to "an almost dead crawl," so that vehicles had "to slow down, stop and get into the other lane to avoid striking" him. This evidence permitted a jury to find that the police had probable cause to believe appellant was obstructing and hindering the free passage of persons in those vehicles, in violation of CR § 10-201(c)(1).

Appellant, contends, however, that he "did not *willfully* obstruct or hinder anyone," and his intent was to return to his hotel. As the State notes, however:

> [T]he evidence established that several vehicles had to take evasive actions to avoid [appellant]. Therefore, [appellant] was on notice that his presence in the roadway had the effect of obstructing and hindering not only those vehicles, but any other vehicle that might thereafter come past. Despite this awareness, [appellant] did not move out of the roadway; indeed, the obstruction and hindrance he created was only abated when he was physically removed from the roadway by the police. Because [appellant] understood the effect of his actions but continued to stand in the roadway despite that effect, the police had probable cause to believe that [appellant's] actions were willful.

We agree. The evidence was sufficient to support a finding that the police had probable cause to believe that appellant willfully obstructed or hindered the free passage

of others in a public roadway, and therefore, the arrest was lawful.[2] Accordingly, appellant did not have the right to use force to resist apprehension, and the evidence was sufficient to support appellant's conviction of resisting arrest.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[2] Although appellant's acquittal of this charge indicates that the State failed to prove beyond a reasonable doubt that there was a willful hindrance, "[a] finding of probable cause requires less evidence than is necessary to sustain a conviction." *Haley v. State*, 398 Md. 106, 133 (2007).