Circuit Court for Worcester County
Case No.: 23-J-16-000110

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2090

September Term, 2016

IN RE: Q.M.

Meredith,
Reed,
Davis, Arrie W.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: September 14, 2017

The Circuit Court for Worcester County, sitting as a juvenile court, held that the appellant, Q. M., committed acts which, if they had been committed by an adult, would comprise a failure to obey a lawful order and second-degree assault. The Honorable Thomas C. Groton, III, presided over an adjudicatory hearing on November 7, 2016, and found the appellant involved as to both counts. On December 5, 2016, the appellant was placed on supervised probation. The appellant filed a timely appeal and presents a single question for our review, which we have separated and rephrased:[1]

1. Was the evidence legally insufficient to support the juvenile court's findings of delinquency pertaining to failure to obey a lawful order?

2. Was the evidence legally insufficient to support the juvenile court's findings of delinquency pertaining to second-degree assault?

For the following reasons, we answer both questions in the negative. Accordingly, we shall reverse the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On July 2, 2016, the appellant, Q.M., a fifteen year old minor, and three friends traveled by bus to Ocean City with the intention of walking around the boardwalk and returning home the next morning. The four teens entered into the lobby of the Quality Inn on Baltimore Avenue, to rest and charge their phones. While in the hotel lobby, Appellant

[1] The appellant originally presented the following question:

1. Was the evidence legally insufficient to support the juvenile court's findings of delinquency?

fell asleep. He was awakened by his friends, warning him that a hotel employee had threatened to call the police, if they refused to leave. Subsequently, the appellant and two of his friends left the hotel, while one friend, C.C., remained in the lobby. After walking the boardwalk, the three young men returned to the hotel to retrieve C.C.

Officer McBride, of the Ocean City Police Department, received a dispatch call to come to the Quality Inn in regard to "several trespassers." Officer McBride, who was working the midnight shift, arrived with Officer Cooper and met Officer Schopin at the hotel. Officer McBride spoke with the hotel employee who called the police and who identified the appellant as one of the "trespassers." The officers were in the lobby speaking with C.C., when the appellant and his companions arrived outside of the hotel. One of the boys, G.D., went inside of the hotel lobby where C.C. was located in an effort to retrieve him. Once inside, G.D. made contact with Officer McBride. Officer McBride then followed G.D. outside to the patio area of the hotel[2] where the appellant and another friend were waiting. Officer McBride directed the young men to re-enter the hotel so that they could "figure out what's going on."

Once inside the lobby, the officers asked the young men to sit down in order to conduct an investigation. The appellant, who had his hands inside of his t-shirt, was asked to remove his hands from his shirt and to sit down. The appellant refused to follow the officer's request. Again, the officer ordered the appellant to remove his hands from his

[2] Officer McBride testified that he located the appellant and another alleged trespasser "out the back door to the Quality Inn on their back-patio section," which was described as "a little bar/patio area."

shirt and sit down. On the second request, the appellant removed his hands from his shirt, but refused to sit down despite the officer's order.[3] The appellant contends that he did not sit down because, "[he] didn't feel like [he] was in trouble, and [he] felt like [he] had already left the situation, and [the officers] brought [him] back into it." Even though he did not comply with the officers second order, the appellant was neither free to leave nor did he feel free to leave.

After the appellant's refusal to sit down, Officer Cooper attempted to physically force the appellant to sit down onto a couch in the hotel lobby. Officer Cooper "reached up onto [the appellant's] shoulders and just applied pressure to attempt to force him to sit down…" In response to Officer Cooper's attempt to force the appellant to be seated, he quickly turned around and "swatted" Officer Cooper's hands from his shoulders. After the appellant swatted Officer Cooper's hands from his shoulders, he sat down, and placed under arrest by the officers.

During the hearing, Officer McBride was asked why the officers wanted the young men to be seated, to which Officer McBride responded, "[i]t's common practice just for officer safety reasons." When asked the same question again on cross examination, Officer McBride responded, "[i]t's common practice for us to get who we investigate to sit down…" The officers testified that they were unsure if the appellant had a weapon, which is why they asked him to remove his hands from his shirt and be seated. The officers further testified that the appellant's demeanor was "very uncooperative" and that the appellant

[3] The State alleges that the officer asked the appellant to sit down three times.

appeared "agitated" while he was in the lobby with the officers. Officer Cooper did acknowledge that, after the appellant was ordered to remove his hands from his shirt and to sit down, he was not free to leave.

The appellant testified that, while he was in the lobby awaiting the officers' investigation, he did not feel free to leave. The appellant also testified that he swatted the officer's hands from his shoulders because "[he does not] like people putting their hands on [him], and [the officer] put his hands on [him] and applied pressure." The appellant attempted to move the officer off of him because, "[he] didn't feel like [the officer] had any reason to touch [him]." The appellant did not give Officer Cooper consent to touch him. Further, the appellant stated after he swatted the officer's hands, he was placed into the chair and was placed under arrest.

The juvenile court denied both the original and renewed defense motions for judgement of acquittal. The court found that the State had met its burden in proving that the officer's use of force in effecting the arrest was lawful. It further found: "… [the appellant] committed the act as alleged and [found] him involved as to count No. 1, failure to obey a reasonable and lawful order, count no. 2, assault in the second degree."

DISCUSSION

A. Parties' Contentions

The appellant asserts that the evidence was legally insufficient to support the juvenile court's findings of delinquency. Specifically, the appellant contends that the State failed to prove that Officer McBride's order to sit down was to prevent a disturbance to the

public peace under Md. Code, § 10–201(c)(3). The appellant alleges that the officer's order was made according to common investigative practices. The appellant further contends that the officer's justification for the order was insufficient to bring his command under the ambit of the statute.

The appellant further asserts that the evidence was legally insufficient to support the juvenile court's adjudication as to second-degree assault. The appellant alleges that the evidence adduced at trial, demonstrates that the physical contact made with the officer constitutes a lawful resistance to an unlawful arrest. The appellant contends that the encounter escalated to a de facto arrest without probable cause. Ultimately, the appellant asserts that the detention constituted an unlawful arrest that warranted lawful resistance.

Initially, the State argues that the evidence supports the juvenile court's determination that the appellant was delinquent as to failure to obey a lawful order and second-degree assault. Specifically, the State asserts that the order for the appellant to sit down for the purpose of conducting an investigation was made to preserve public peace. The State contends that, if the police did not have control over the situation, and the appellant did not comply, it would have been a disturbance to the public peace. Therefore, the State asserts that the order fell within the ambit of the statute.

Also, the State argues that the appellant had no right to resist the officers' detention and that the finding of delinquency for second-degree assault is proper. The State contends that the appellant was being detained for the purpose of conducting an investigation. The State also asserts that the unjustified and nonconsensual touching during the detention

amounted to second-degree assault under Md. Code Ann., Crim. Law, § 3–201(b). Furthermore, the State argues that, even assuming, *arguendo*, the appellant was arrested, he was not entitled to resist the lawful arrest.

B. Standard of Review

This Court has established the following standard of review for determining whether evidence presented at trial was sufficient to support a finding that a juvenile has committed a delinquent act:

> In reviewing the sufficiency of evidence that a juvenile has committed a delinquent act, the standard of review is whether the evidence, adduced either directly or by rational inference, enabled the trier of fact to be convinced beyond a reasonable doubt that the juvenile committed the act.

In re Eric F., 116 Md. App. 509, 519 (1997). *See also, In re George V.*, 87 Md. App. 188, 193 (1991).

C. Analysis

Failure to Obey a Lawful Order

We find the appellant's argument that the evidence was legally insufficient to support the adjudication as to failure to obey a lawful order, persuasive. For the following reasons, we agree that the order by Officer McBride to sit down in order to conduct a police investigation was not made in an attempt to prevent a disturbance to the public peace. We explain.

Section 10–201(c)(3) of the Criminal Law Article of the Maryland Code states:

> A person may not willfully fail to obey a reasonable and lawful order that a law enforcement officer makes to prevent a disturbance to the public peace.

This disorderly conduct statute essentially has three components: (1) a willful disobedience; (2) of a lawful order; and (3) made to prevent a disturbance to the public peace. Md. Code Ann., Crim. Law, § 10–201. Disorderly conduct constitutes a failure to obey a reasonable and lawful request by a police officer fairly made to prevent a disturbance of the peace. *See Harris v. State*, 237 Md. 299, 303 (1965). A breach of peace is defined as disorderly, dangerous conduct when "an affray, actual violence, or conduct tending to or provocative of violence by others" occurs. *Spry v. State*, 396 Md. 682, 691 (2007). The gist of disorderly conduct, as it relates to a "police command," requires that there be a sufficient nexus between the police command and the probability of disorderly conduct. *Dennis v. State*, 342 Md. 196, 201 (1996). Police commands cannot be purely arbitrary and cannot be mannered in a way that does not promote public order. *Id*.

We rely on *Spry v. State*, 396 Md. 682 (2007), to further explain the circumstances in which police orders are made to prevent a disturbance to the public peace. In *Spry*, police officers were responding to a series of tumultuous events involving a large group of potentially riotous people. *Id.* at 684. Officers responded to a call at an apartment complex, where forty to sixty people were loitering after an altercation. *Id.* Among the group of loiterers ordered to leave the apartment complex was Mr. Spry. Mr. Spry refused to leave after multiple police orders to leave the premises. *Id.* at 685–86. Rather than leave, Mr. Spry responded to the officers by yelling profanity, menacingly glaring at officers, and

causing a disturbance. *Id.* at 686. Mr. Spry finally left the premises after being told to leave approximately four to five times within a five to ten-minute time frame. *Id.* Later, Mr. Spry was formally charged with, among other things, failing to obey a lawful order. *Id.* at 687.

We also rely on *Harris*, *supra*, to aid in our explanation of what constitutes disorderly conduct. 237 Md. 299 (1965). The appellant, Mr. Harris, was invited to attend a local union meeting. *Id.* at 301. However, the invitation to attend the meeting was withdrawn upon Mr. Harris' arrival. *Id.* Police officers were requested to stop the appellant's persistent attempts to enter the meeting despite his withdrawn invitation. *Id.* at 302. Mr. Harris yelled "anti-racial" remarks to the police and caused a scene with twenty-five to thirty people outside of the meeting hall. *Id.* Despite police orders, the appellant proceeded to push his way through two officers' physical restraints while trying to enter the meeting hall. *Id.* As a result, Mr. Harris pushed an officer into the hall and scuffled with another officer until he was taken away. *Id.* Mr. Harris was convicted of disorderly conduct in the Circuit Court for Wicomico County and the Court of Appeals affirmed the conviction. *Id.* at 304.

We find that the present case is distinguishable from both *Spry* and *Harris*. In *Spry*, the police orders were given to de-escalate a large, potentially riotous crowd screaming loudly, and yelling profanity. Mr. Spry refused to follow police orders specifically given to prevent a further public disturbance. Additionally, Mr. Spry was ordered four to five times by police to leave the premises before he eventually complied. In the present case, the police order for the appellant to sit down was given only as a measure of common

practice. Officer McBride testified that the police order in the present case was not given to preserve public peace, but rather as a measure of common investigative protocol. The appellant was not taking part in disruptive activities, nor was he combative with the police as demonstrated in *Spry*. The police request for the appellant to sit down in the present case is not on par with the police order to prevent a potential riot in *Spry*.

Additionally, here, the police order arises out of a docile situation in contrast to *Spry* and *Harris*. In *Harris*, the police orders were a result of Mr. Harris' repeated attempts to enter the meeting hall against police orders. Also, Mr. Harris' loud and taunting public address outside of the meeting hall was compromising public peace. In *Spry*, Mr. Spry was a part of a large group of loiterers who refused to leave after an altercation. The appellant in the current case was inside of a hotel lobby with friends awaiting questioning from officers. The appellant was not posing a threat to public peace or safety by quietly awaiting a police investigation to take place. Additionally, the appellant was not willfully ignoring a police order which was given to prevent dangerous or disorderly conduct. In the present case, the appellant failed to comply with an order given as common police practice.

We hold that a failure to obey an arbitrary police order that is not given to prevent a disturbance of public peace does not constitute failure to obey a lawful order. The present case does not depict a situation where a police order was given to promote public order, such as in *Spry* and *Harris*. Instead, we find that the police order for the appellant to be seated for an investigation due to common practice is an arbitrary command. Given the testimony offered at trial, the triar of fact could not properly adduce that the command was

given to prevent a disturbance of the peace. Therefore, we reverse the juvenile court's finding of delinquency as it pertains to failure to obey a lawful order.

Second-Degree Assault

We hold that the evidence was not legally sufficient to support the juvenile courts conviction of second-degree assault. We further find that the appellant's detention elevated to a de facto arrest, one in which the appellant was warranted to resist.

The Court of Appeals defined in *Bouldin v. State*, the perimeters of a legal arrest. It held: "It is said that four elements must ordinarily coalesce to constitute a legal arrest: (1) an intent to arrest; (2) under a real or pretended authority; (3) accompanied by a seizure or detention of the person; and (4) which is understood by the person arrested…" 276 Md. 511, 515-16 (1976). In situations where there is a seizure, but no probable cause, that seizure is considered a de facto arrest. *See Bailey v. State,* 412 Md. 349 (2010)("If a seizure and subsequent search is not justified by reasonable, articulable suspicion that the individual is armed pursuant to *Terry*, the seizure is a de facto arrest and must be supported by probable cause in order to be lawful."). As such, a de facto arrest is highly factual and depends on the circumstances of the seizure.

A de facto arrest occurs when "a reasonable person [would] have felt he or she was not free" to leave a situation or end an encounter. *Reid v. State*, 428 Md. 289, 299 (2012). A detention can elevate to a de facto arrest when a police officer acts with "actual authority and physically seizes [a person]," resulting in the person having a clear understanding that he or she is not free to leave. *Id.* at 300 (citing *Bailey v. State*, 412 Md. 349 (2010)).

Probable cause for an arrest exists where: "the facts and circumstances within the officer's knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed [by the person to be arrested]." *Longshore v. State*, 399 Md. 486, 501 (2007).

We agree with the appellant that his detention was indeed a de facto arrest. The present case resembles the facts in *Bailey v. State*, 412 Md. 349 (2010), where the Court of Appeals held that when an officer grabbed a man's hands, placed them over his head, and conducted a search of his body, it was considered a de facto arrest. Here, the officer exerted force and physically "seized" the appellant. Although the appellant's hands were not restrained with a subsequent search of his person, like in *Bailey*, the appellant was forcibly seated by an officer for investigative purposes. The force exerted by the officer gave the appellant a clear understanding that he was not free to leave or end the encounter, similar to *Bailey*. Moreover, Officer Cooper testified that the appellant was not free to leave at this moment. The appellant also testified that he did not feel free to leave. For this reason, we hold that the detention of the appellant elevated to a de facto arrest.

Further, we hold that the appellant was warranted to resist the arrest. There is a long-standing maxim in Maryland regarding resisting arrests, "one illegally arrested may use any reasonable means to effect his escape, even to the extent of using such force as is reasonably necessary." *State v. Wiegmann*, 350 Md. 585, 601 (1998). However, the modern trend has been to limit private citizens exercising this rule. *Id.* at 602. This Court previously

stated that questions as to "whether officers possessed articulable suspicion must be resolved in the courtroom and not fought out on the streets." *Id.* (quoting *State v. Blackman*, 94 Md. App. 284 (1992).[4] Regardless, we believe the common law rule on resisting unlawful arrests is applicable in this case. The encounter between Officer Cooper and the appellant elevated to a de facto arrest. A de facto arrest is lawful dependent upon the existence of probable cause. It is to this probable cause requirement which we now turn our attention.

There was not sufficient probable cause to support the de facto arrest in the present case. The facts and circumstances were that a hotel employee called the police concerning four young men trespassing. When the officers arrived, one officer spoke with the hotel employee who made the call to corroborate the situation. The officers subsequently found the four young men, some of them inside the hotel and some were outside on the patio. We believe that the officers did not have enough information, at that time, to have sufficient probable cause for the investigation and detention. The evidence presented at trial does not indicate that the officer had probable cause upon his encounter with the appellant and his friends. In fact, a cursory glance through the trial transcript indicates that any testimony that could have given rise to probable cause was precluded and subsequently abandoned. The question we were asked was whether the evidence adduced at trial, was legally sufficient to support the courts finding, to that we answer in the negative. We find that there

[4] This Court also found that recognizing the right to resist momentary seizures serves to expand the danger of violence. *Barnhard v. State*, 86 Md. App. 518, 528 (1991).

is no indication either in the record or otherwise that would suggest that the officers had probable cause. Thus, this was an unlawful arrest that the appellant had the right to resist.

Finally, we address the second-degree assault. In Maryland, second-degree assault is a statutory offense. *See Snyder v. State*, 210 Md. App. 370, 379 (2013). Md. Code, Crim. Law § 3-203(a) states, "a person may not commit an assault." The statutory offense of second-degree assault has three varieties: (1) intent to frighten; (2) attempted battery; and (3) battery. *Snyder* at 382. The Court of Appeals further defined battery as "the unlawful application of force to the person from another." *Snowden v. State*, 321 Md. 612, 617 (1991).[5] We find that by merely swatting away the officer's hands, the appellants actions do not rise to the level of statutory second-degree assault. Moreover, his actions do not fall within the three varieties: the appellant did not intent to frighten Officer Cooper, there is no testimony suggesting that he attempted battery, and finally, there was no unlawful touching that resulted in an injury. Accordingly, we hold that the appellant did not assault Officer Cooper.

We do not deviate from the common law rule and hold that an illegally arrested person may resist an unlawful arrest with reasonable force. The evidence adduced at trial did not show that Officer Cooper had probable cause to detain the appellant. As such, the detention of the appellant was illegal. Therefore, the appellant had grounds to resist the de

[5] This definition was to help further explain battery. Common law assault and battery no longer exist in Maryland. *Robinson v. State*, 353 Md. 683, 701 (1999).

facto arrest. For these reasons, the appellant did not commit an assault on the officer in the second-degree, and the juvenile court improperly found delinquency.

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY REVERSED. COSTS TO BE PAID BY WORCESTER COUNTY.