

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA
Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

MARK ANTHONY DOUGLAS

Appellant

No. 1523 WDA 2013

Appeal from the Judgment of Sentence dated September 6, 2013
In the Court of Common Pleas of Blair County
Criminal Division at No: CP-07-CR-0000013-2013

BEFORE: PANELLA, MUNDY, and STABILE, JJ.

MEMORANDUM BY STABILE, J.: FILED: May 30, 2014

Appellant Mark Anthony Douglas appeals from a judgment of sentence of the Court of Common Pleas of Blair County (trial court), which, following a jury trial, convicted him of resisting arrest under Section 5104 of the Crimes Code (Code).¹ For the reasons set forth below, we affirm.

The facts underlying this appeal are undisputed. On December 13, 2012, Patrolman Richard Benzel of the Logan Township Police Department charged Appellant with resisting arrest.² In his affidavit of probable cause accompanying the complaint, Officer Benzel alleged:

¹ Act of December 6, 1972, P.L. 1482, 18 Pa.C.S. § 5104.

² Although Appellant was also charged with and convicted of criminal mischief under Section 3304(a)(3) of the Code, the trial court set aside the verdict, because the Commonwealth failed to meet its burden of proof in establishing all elements of the offense.

On 12/12/2012 at 2144 hours officers were dispatched to Motel 6 room #114 to assist the Altoona Police Department with a [protection from abuse (PFA)] violation [under the Protection from Abuse Act (Act), Act of December 19, 1990, P.L. 1240, **as amended**, 23 Pa.C.S. §§ 6101-6122]. We were advised to take [Appellant] into custody for the violation. Upon our arrival this affiant made contact with the front desk to verify that [Appellant] was in fact in that room and it was verified by the clerk that he was. We then knocked and announced our presence and this affiant could see [Appellant] at the door and he could also see me. We advised [Appellant] that we were the police and he needed to open the door. He asked why? This time Lt. Barton advised him that he was under arrest and would be coming with us. [Appellant] ignored our continued request to open the door. After numerous attempts this affiant went back to the front desk to get a room key to open the door. The clerk stated that if [Appellant] had the deadbolt locked the key would not work. This affiant returned to the room and tried the key but it did not work. More knocking and announcing took place and [Appellant] was out of sight of officers. This affiant again returned to the front desk and got the clerk to re-load the key just in case. I returned to the room and the key still did not work. By this time we had requested for assistant [sic] from other officers and they arrived on scene. This affiant called [Appellant] by name and advised him that we were going to break out the window if he did not open the door. [Appellant] did not comply and the right[-]side window to the room was broken out. [Appellant] then decided to open the door but began to walk towards the bathroom after being told to get on the ground. [Appellant] was then taken to the ground by officers and he refused to put his hands behind his back. After a brief struggle he was taken into custody.

Affidavit of Probable Cause, 12/13/12. Ultimately, the case proceeded to a jury trial, at which both parties presented testimony. Following the jury trial, Appellant was convicted of resisting arrest and sentenced to 18 months' probation. Appellant appealed to this Court. Following his filing of a concise statement of errors complained of on appeal, the trial court issued an opinion in accordance with Pa.R.A.P. 1925(a). In its 1925(a) opinion, the trial court determined that there was sufficient evidence to convict Appellant of resisting arrest. In particular, the trial court concluded:

[T]he testimony before the jury was that after refusing to admit police to the motel room when they had a legitimate

reason to enter, thus forcing them to break a window for entry, Appellant also by his actions and inaction forced police to use substantial force to overcome his resistance to being handcuffed and arrested.

Trial Court Opinion, 10/8/13, at 2.

On appeal, Appellant essentially argues that the Commonwealth did not present sufficient evidence to support his conviction for resisting arrest.³

Our standard and scope of review for a sufficiency claim is well-settled:⁴

We must determine whether the evidence admitted at trial, and all reasonable inferences drawn therefrom, when viewed in a light most favorable to the Commonwealth as verdict winner, support the conviction beyond a reasonable doubt. Where there is sufficient evidence to enable the trier of fact to find every element of the crime has been established beyond a reasonable doubt, the sufficiency of the evidence claim must fail.

The evidence established at trial need not preclude every possibility of innocence and the fact-finder is free to believe all, part, or none of the evidence presented. It is not within the province of this Court to re-weigh the evidence and substitute our judgment for that of the fact-finder. The Commonwealth's burden may be met by wholly circumstantial evidence and any

³ To the extent Appellant argues that the Commonwealth did not present sufficient evidence to establish the lawful arrest element of resisting arrest, we must reject such argument. We note that Appellant has waived a challenge to the lawful arrest element of the crime, because Appellant's attorney failed to raise this issue before the trial court. **See** Pa.R.A.P. 302(a); **see also Commonwealth v. Tainan**, 734 A.2d 886, 888 (Pa. Super. 1999) **aff'd**, 770 A.2d 316 (Pa. 2001). To the extent Appellant's counsel addressed the lawfulness of the arrest below, he stipulated at a sidebar conference during trial that the parties would forgo any reference to an arrest warrant because such a reference would be prejudicial to Appellant. **See** N.T. Trial, 6/24/13, at 29-30. Indeed, Appellant's attorney stipulated that the police had a *legitimate reason* to go to the motel to arrest Appellant, because he had violated a PFA order. ***Id.***

⁴ A challenge to the sufficiency of the evidence is a question of law, subject to plenary review. **Commonwealth v. Williams**, 871 A.2d 254, 259 (Pa. Super. 2005).

doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances.

Commonwealth v. Mobley, 14 A.3d 887, 889-90 (Pa. Super. 2011). Additionally, "in applying the above test, the entire record must be evaluated and all evidence actually received must be considered." **Commonwealth v. Coleman**, 19 A.3d 1111, 1117 (Pa. Super. 2011).

Section 5104 of the Code provides:

A person commits a misdemeanor of the second degree if, with the intent of preventing a public servant from effecting a lawful arrest or discharging any other duty, the person creates a substantial risk of bodily injury to the public servant or anyone else, *or employs means justifying or requiring substantial force to overcome the resistance*.

18 Pa.C.S. § 5104 (emphasis added). In other words, as we explained in **Miller**, "[a] person resists arrest by conduct which 'creates a substantial risk of bodily injury' to the arresting officer or *by conduct which justifies or requires 'substantial force to overcome resistance.'*" **Commonwealth v. Miller**, 475 A.2d 145, 146 (Pa. Super. 1984) (emphasis added). This statutory language "does not require the aggressive use of force such as a striking or kicking of the officer." ***Id.*** Intent can be inferred from a person's conduct or *the attendant circumstances*. **See Commonwealth v. Lewis**, 911 A.2d 558, 564 (Pa. Super. 2006).

Here, in support of his argument that the evidence was insufficient to sustain his conviction for resisting arrest, Appellant points out that not enough time had lapsed between the officers' entry into the room and their tackling him to the ground for purposes of demonstrating resistance. We

disagree. As the trial court noted, Appellant's resistance manifested itself when he failed to open the motel room door for nearly thirty minutes and forced the police to break a window to the room. The Commonwealth presented testimonial evidence in support of the resisting arrest charge.

The Commonwealth first presented the testimony of Patrolman Benzel, who testified that the Altoona Police Department contacted him for purposes of assisting them in Appellant's arrest for a PFA violation. N.T. Trial, 6/24/13, at 32. Patrolman Benzel also testified that Altoona Police Department informed him that Appellant was located at Motel 6, which is within the jurisdiction of the Logan Township Police Department. ***Id.*** at 33. Patrolman Benzel further testified that, upon confirming that Appellant was staying at the motel, he and two other police officers knocked on the door of Appellant's motel room. ***Id.*** at 34. Appellant answered the knocks by inquiring who was at the door. ***Id.*** Patrolman Benzel testified that he and the other officers identified themselves to Appellant. ***Id.*** After some knocking, according to Patrolman Benzel's testimony, the police advised Appellant that he was under arrest. ***Id.*** The police, thereafter, attempted to open the door to Appellant's room by using passkeys issued by the motel front desk. ***Id.*** at 36, 38. The passkeys did not work. ***Id.*** at 37-38.

Patrolman Benzel also testified that, twenty to thirty minutes after their arrival to the motel, "we told [Appellant] if he did not come out were going to come in. We tried to kick the door a couple of times, it did not work and then we just told him we were going to break the window and

come in." ***Id.*** at 39. As the police broke the window to Appellant's motel room, Appellant opened the front door. ***Id.*** at 40. Patrolman Benzel testified that after Appellant opened the door, "[Appellant] turned and starting walking towards the bathroom, which is the furthest point back of the room." ***Id.*** at 40-41. Describing the police's effort to arrest Appellant once inside the room, Patrolman Benzel testified:

Q. Did you say anything to him?
A. Get on the ground, stop, get on the ground. Normal things we yell at people whenever we're trying to arrest them.
Q. Did he do any of that?
A. No.
Q. How did you subdue [Appellant]?
A. We tackled him.
Q. And was that on the floor of the motel room?
A. Yes. It was like in front of the dresser that was there.
Q. Did you then place [Appellant] under arrest?
A. Yes.

Id. at 41-42. Specifically, Patrolman Benzel explained that he used "a pain compliance" method to put Appellant's hands behind his back because Appellant "would not give [the police] his hands." ***Id.*** at 71-72. In so doing, Patrolman Benzel testified that he kneed Appellant "in the side. . . . in the rib cage area." ***Id.***

On cross-examination, Patrolman Benzel acknowledged that, prior to being tackled, Appellant did not look or say anything to him when he entered the motel room. ***Id.*** at 45. In fact, Patrolman Benzel further acknowledged that Appellant's back was toward him as Appellant was walking away in the direction of the bathroom. ***Id.*** at 46.

The Commonwealth next presented the testimony of Patrolman Brian Reidy, Logan Township Police Department, whose testimony largely mirrored the testimony of Patrolman Benzel. In fact, Patrolman Reidy testified that upon knocking on Appellant's motel room,

[w]e continually yelled, pounded on the door and the window stating who we were, why were where there. Like I said that was several times. Once or twice [I could see Appellant] walking to the back of the room, to the front door trying to look out the door to see who was outside.

Id. at 51. Describing Appellant's conduct when the police entered the motel room, Patrolman Reidy testified that "[Appellant] was proceeding to the back portion of the motel room walking away from us." ***Id.*** at 54. Patrolman Reidy also testified that once the police tackled Appellant to the ground, "[Appellant] just kind of shrugged his shoulders a little bit, tried to roll around but we were able to get his hands behind his back and handcuff him." ***Id.*** at 55.

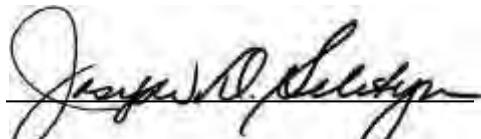
Based on our review of the entire record and viewing the evidence in the light favorable to the Commonwealth, thereby giving it the benefit of the reasonable inferences derived therefrom, we conclude that the Commonwealth presented sufficient evidence to sustain Appellant's conviction for resisting arrest. Indeed, as the trial court specifically found:

The testimony at trial revealed that Appellant was in room 114 at the Motel 6 when the Altoona Police went there to take him into custody for a PFA violation. Appellant refused to open the door for the police after multiple requests. They forced entry. Appellant disobeyed orders of the police once they had entered and forced them to use force to subdue and arrest him.

Trial Court Opinion, 10/8/13, at 2. Accordingly, given the evidence and the circumstances surrounding Appellant's arrest, the jury could, and did, reasonably infer that Appellant's refusal to open his motel room door for almost thirty minutes coupled with his failure to obey police orders, and requiring the police to subdue him once the police were inside the room amounted to resisting arrest.⁵

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/30/2014

⁵ See **Commonwealth v. Thompson**, 922 A.2d 926 (Pa. Super. 2007) (holding evidence sufficient where the officer struggled while arresting the appellant, who had interlocked her arms and legs with her husband); **Commonwealth v. Jackson**, 907 A.2d 540 (Pa. Super. 2006) (concluding that the evidence was sufficient where the appellant struggled while being taken into custody and continued to resist attempts to subdue him by spitting blood and saliva at the officer).