

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **CR-1466-2018**
v. :
: :
SALADIN BROWN : **HABEAS**
Defendant :

OPINION AND ORDER

Saladin Brown (Defendant) filed an Omnibus Pretrial Motion on October 22, 2018, Petitioning for Writ of Habeas Corpus and asserting a Motion in Limine.¹ A hearing took place on December 6, 2018. At that hearing both Defendant and Commonwealth presented argument and reached an agreement to rely upon the testimony provided at the preliminary hearing and stipulated to the entering of a video encounter of the event captured on a cellphone that was to be provided to the Court at a later date. Defendant challenges the sufficiency of the Commonwealth's evidence on one count of Disorderly Conduct, Hazardous/Offensive Condition,² one count of Resisting Arrest,³ one count of Obstruction of the Administration of the Law,⁴ and two counts of Criminal Mischief.⁵

Preliminary Hearing Testimony

Officer Clinton Gardner (Gardner) of the Williamsport Bureau of Police testified on behalf of the Commonwealth. The testimony established the following. Gardner testified that on the day of September 2, 2018, he and other officers were patrolling the area of Kramer Court and Elmira St. P.H. 9/20/18, at 4. While detaining an individual believed to have just been a party

¹ The Court will only address the Petition for Writ of Habeas Corpus at this time and takes notice of the Motion in Limine, but will save the issue for a determination to be made at a later date.

² 18 Pa. C.S. § 5503(a)(4).

³ 18 Pa. C.S. § 5104.

⁴ 18 Pa. C.S. § 5101.

⁵ 18 Pa. C.S. § 3304(a)(1).

to a narcotics transaction, Defendant began approaching Gardner. *Id.* at 5-10. As Defendant approached he was yelling at the detained individual. *Id.* at 10. Defendant was instructed to stop yelling and step back multiple times, but did not. *Id.* Defendant left momentarily and returned with another individual. *Id.* At this point he continued yelling at the detained individual as well as down the street, eventually gaining the attention of numerous other individuals, who started coming outside. *Id.* at 11. Gardner testified that on a prior occasion individuals came out yelling on the block in a similar manner and the “block had exploded that day. People came out. People started yelling.” *Id.* at 12. It was Gardner’s intention at this point to detain Defendant, but he had lost him briefly so he radioed other nearby units. *Id.* at 11-13. Gardner re-spotted Defendant and told him to place his hands on the vehicle for a pat down, which he did not comply initially. *Id.* at 13. At the beginning of the pat down, Defendant would not spread his feet and would not keep his hands on the vehicle. *Id.* at 14. When Gardner was patting down Defendant, he began yelling and turning into Gardner, at which point Gardner in fear of a weapon took Defendant to the ground and handcuffed him. *Id.* at 14-15. At this point there was roughly fifteen to twenty individuals outside observing the officers and one individual began charging the officers to the extent “[one of the officers] had to unholster his taser and approach that individual due to his charging.” *Id.* at 15. The individuals involved in the original believed narcotics transaction were taken to the station and searched before being allowed to leave and were not charged. *Id.* at 18-20.

Discussion

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove Defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. *Commonwealth v. McBride*, 595 A.2d 589,

591 (Pa. 1991). A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused likely committed the offense. *Id.* Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001). *Prima facie* in the criminal realm is the measure of evidence, which if accepted as true, would warrant the conclusion that the crime charged was committed. While the weight and credibility of the evidence are not factors at this stage, and the Commonwealth need only demonstrate sufficient probable cause to believe the person charged has committed the offense, but the absence of evidence as to the existence of a material element is fatal. *Commonwealth v. Ripley*, 833 A.2d 155, 159-60 (Pa. Super. 2003). Moreover, “inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case.” *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003).

The Commonwealth has charged Defendant with one count of Disorderly Conduct. The Commonwealth is required to prove that Defendant, “with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he: creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.” 18 Pa. C.S. § 5503(a)(4). This offense is to be graded as a misdemeanor of the third degree if Defendant “persists in disorderly conduct after reasonable warning or request to desist.” 18 Pa. C.S. § 5503(b). As described in *Commonwealth v. Mauz*:

The offense of disorderly conduct is not intended as a catchall for every act which annoys or disturbs people; it is not to be used as a dragnet for all the irritations which breed in the ferment of a community. It has a specific purpose; it has a definite objective, it is intended to preserve the public peace. Indeed, our

courts have repeatedly emphasized that the goal of § 5503 is to protect the public.

122 A.3d 1039, 1041 (Pa. Super. 2015) (internal citations omitted).

“The cardinal feature of the crime of disorderly conduct is public unruliness which can or does lead to tumult and disorder.” *Commonwealth v. Hock*, 728 A.2d 943, 946 (Pa. 1999). In *Mauz* a woman, her boyfriend, and a few of her friends were in her backyard when a neighbor on his own yard began shouting obscene remarks at her. *Mauz*, 122 A.3d at 1042-43. The Commonwealth failed to demonstrate that Defendant “recklessly created a risk of a hazardous or physically offensive condition under § 5503(a)(4),” when the individuals were on their own yards, a five or six foot high fence separated them, the interaction was brief in nature only lasting a few seconds, the defendant retreated back into his house, and there was no evidence that others in the neighborhood heard the comments. *Id.*

Defendant argues, as was found in *Mauz*, that Defendant did not have the requisite intent for 18 Pa. C.S. § 5503(a)(4). The situation that occurred on September 2, 2018 is in complete opposition to that perspective. This occurrence occurred on a public sidewalk/street and not in individuals’ private yards and the interaction between Gardner and Defendant spanned more than mere seconds. Additionally, Gardner’s testimony states he was yelling at the detained individual and down the street. From this factual situation, it can be reasonably inferred that Defendant’s yelling down the street was with the intent to cause “public inconvenience, annoyance or alarm” or at the least created a reckless risk of creating such a situation. By the time the pat down was being conducted on Defendant fifteen to twenty individuals were outside and nearby. Based on these facts, the Commonwealth has established at least a *prima facie* case of disorderly conduct.

The Commonwealth has charged Defendant with one count of Resisting Arrest. The Commonwealth is required to prove that Defendant, “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. The Pennsylvania Superior Court has found that Resisting Arrest’s definition of “discharging any other duty” includes resistance of a valid *Terry* frisk. *See Commonwealth v. Jackson*, 907 A.2d 540, 546 (Pa. Super. 2002); *Commonwealth v. Coleman*, 19 A.3d 1111, 1118 (Pa. Super. 2011). Since the Commonwealth established a *prima facie* case for Disorderly Conduct, a search incident to arrest was permissible including the less intrusive frisk. *In re R.P.*, 918 A.2d 115, 121 (Pa. Super. 2007). Therefore the Commonwealth need only show Defendant “create[d] 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.

Substantial risk of harm or substantial force to overcome harm does not extend to “minor scuffling which occasionally takes place during an arrest.” 18 Pa. C.S. § 5104 cmt. But it also does not require physical action against the officer and includes a defendant's passive resistance that required an officer to use substantial force to overcome. *Commonwealth v. Thompson*, 922 A.2d 926, 928 (Pa. Super. 2007) (effort exerted to pull the defendant from her husband left the officer “exhausted”); *see also Commonwealth v. McDonald*, 17 A.3d 1282, 1285 (Pa. Super. 2011) (struggled to forcibly remove defendant’s hands from his jacket and had to deploy taser). Courts have defined the threshold of what constitutes resisting arrest as opposed to a mere scuffle through precedent. *See Commonwealth v. Franklin*, 69 A.3d 719 (Pa. Super. 2013) (defendant consistently swinging arms and fists in a violent nature was considered

resisting arrest); *Commonwealth v. Stevenson*, 894 A.2d 759, 775 (Pa. Super. 2006) (defendant mule kicked an officer a few times was considered resisting arrest); *Commonwealth v. Lyons*, 555 A.2d 920 (defendant struggled with officers after forcing them to chase him into a freezing cold creek was considered resisting arrest); *Commonwealth v. Guerrisi*, 443 A.2d 818 (Pa. Super. 1982) (defendant hit arresting officer in the groin was considered resisting arrest); *Coleman*, 19 A.3d at 1118 (defendant hit officer with his shoulders and continually cursed at him was considered resisting arrest).

The situation here does not amount to the level established by case precedent and falls under the exception of a minor scuffle. At the preliminary hearing Gardner testified:

A. I, again, instructed him to place his hands on the vehicle as I would be patting him down for weapons again.

Q. And did he comply with that?

A. He did.

Q. And then what did you ask [Defendant] to do?

A. While I was attempting to pat him down he was removing his hands from the vehicle. I told him not to remove his hand from the vehicle. Also, when I asked him to spread his feet he would not spread his feet. So I had to do a sweeping motion towards his leg to spread his feet.

Q. And then did you begin the pat-down?

A. I did.

Q. And describe how you patted [Defendant] down.

A. I patted him down with the flat of my hand, just down around his waist band, typical areas where firearms can be concealed, down his legs. Once I reached his groin with the flat of my hand he turned back yelling and turned into me . . . I feared that he may possess a weapon so I took him to the ground.

P.H. 9/20/18, at 14-15.

Then as evidenced in both the Affidavit of Probable Cause and in the Preliminary Hearing Testimony, “[Defendant] immediately gave up his hands, was rolled over to his stomach.” Affidavit of Probable Cause 9/5/18, at 3; *see also* P.H. 9/20/18, at 15. This account amounts to a minor scuffle commonly involved in a police interaction, which the comment means to exclude from the statute. Defendant disobeyed police instructions during a permissible pat-

down and turned into Garnder yelling, but he did not verbally threaten Gardner, he did not strike or attempt to strike Gardner, the struggle ended as soon as Gardner took Defendant to the ground, it only took the efforts of one officer, and there is not testimony this required substantial force that was taxing on Garnder. P.H. 9/20/18, at 14-15, 24. Additionally the brevity of the encounter and extent of the encounter are captured in the video that was submitted as an exhibit. Therefore the Commonwealth has not met its burden of establishing a *prima faice* case on the count of Resisting Arrest.

Defendant next challenges the sufficiency of evidence on the charge of Obstructing Administration of the Law or Other Governmental Function under 18 Pa. C.S. § 5101. For the Commonwealth to establish a *prima facie* case for this charge they must demonstrate that Defendant

intentionally obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

18 Pa. C.S. § 5101.

The portion of the statute that may be applicable here is “any other unlawful act” and therefore does not apply to otherwise lawful conduct. *Commonwealth v. Shelly*, 703 A.2d 499, 504 (Pa. Super. 1997). Intentional actions even if unsuccessful can still constitute sufficient evidence under 18 Pa. C.S. § 5101. *Commonwealth v. Trolene*, 397 A.2d 1200, 1204 (Pa. Super. 1979). This intentional conduct can be demonstrated through a course of disorderly conduct, which obstructs an individual from carrying out their lawful duties. *Commonwealth v. Mastrangelo*, 414 A.2d 54, 60 (Pa. 1980). In *Mastrangelo*, the defendant twice came out and verbally

harassed a parking enforcement official for carrying out her duties to a point she no longer patrolled in that area due to his actions. *Id.* at 55-56. The Pennsylvania Supreme Court found that through the defendant's course of disorderly conduct, he intentionally impeded the parking official from conducting her lawful duty. *Id.* at 60.

As found above, a *prima facie* case has been established that Defendant's conduct constituted Disorderly Conduct. Here the Defendant was yelling at an individual who was being detained by a police officer and was asked to cease, yet refused. P.H. 9/20/18, at 10. Defendant then left and returned again with another individual and continued yelling this time down the street as others began to come out of their houses in the neighborhood. *Id.* at 11-12. During this entire period as more individuals came out of their houses Defendant continued yelling and was continually told to stop. *Id.* Since, "inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect" this evidence is sufficient to establish a *prima facie* case that Defendant was intending to obstruct Gardner and other officers from investigating into a suspected narcotic transaction and effectuating arrests. *Huggins*, 836 A.2d at 866. From the testimony at the Preliminary Hearing whether he was effective or not is at issue, but successful obstruction is not required. *Trolene*, 397 A.2d at 1204. Additionally, Defendant's argues that this action fits within the exception of "flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental function." 18 Pa. C.S. § 5101. This may be true if the actions that occurred during the *Terry* stop constituted the violation, but here it is the actions that constitute the disorderly conduct that are also in violation of 18 Pa. C.S. § 5101. Therefore the

Court has established a *prima facie* case for Obstructing Administration of the Law or Other Governmental Function under 18 Pa. C.S. § 5101.

The Courts determination on a Petition for Writ of Habeas Corpus is “upon the legality of the existing restraint on the petitioner's liberty and not solely upon a review of what occurred at a prior preliminary hearing.” *Commonwealth v. Morman*, 541 A.2d 356, 359-60 (Pa. Super. 1988). In reviewing the restraint on Defendant’s liberties this Court has held proceedings and allowed the introduction of evidence in accordance with what would be permissible at a preliminary hearing in front of a magistrate. As such this Court notes procedurally at a preliminary hearing:

(F) In any case in which a summary offense is joined with misdemeanor, felony, or murder charges:

(1) If the Commonwealth establishes a *prima facie* case pursuant to paragraph (B), the issuing authority shall not adjudicate or dispose of the summary offenses, but shall forward the summary offenses to the court of common pleas with the charges held for court.

Pa. R. Crim. P. Rule 543 (F)(1).

Therefore this Court will not address Defendant’s claims as to his two charged summary offenses because the Commonwealth has established a *prima facie* case for two misdemeanor charges.

Conclusion

Therefore, this Court finds the Commonwealth had presented enough evidence at the preliminary hearing to establish a *prima facie* case for the charges of Disorderly Conduct and Obstructing the Administration of Justice, but has failed to establish a *prima facie* case for Resisting Arrest. Defendant’s Petition for Writ of Habeas Corpus is granted in part and denied in part.

ORDER

AND NOW, this 23rd day of January, 2019, based upon the foregoing Opinion, it is

ORDERED AND DIRECTED that:

- Defendant's Petition for Writ of Habeas Corpus for the charges of Disorderly Conduct, Obstruction of the Administration of the Law, and on the two counts of Criminal Mischief is hereby **DENIED**.
- Defendant's Petition for Writ of Habeas Corpus for the charge of Resisting Arrest is hereby **GRANTED**. It is hereby **ORDERED AND DIRECTED** that the charge of Resisting Arrest be **DISMISSED**.

BY THE COURT,

Nancy L. Butts, P.J.

cc: DA (JR)
Robert Hoffa, Esq.