

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 1401016343
)	
JEREMY C. WATKINS,)	
)	
Defendant.)	
)	

Date Submitted: January 7, 2016
Date Decided: February 2, 2016

MEMORANDUM OPINION

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WELCH, J.

I. Introduction

Trial took place on Wednesday and Thursday, January 6 and 7, 2016. Following the receipt of evidence and testimony, the Court reserved its decision. This is the Court's Final Opinion and Decision.

II. Procedural Posture

Defendant was charged by Information with two (2) misdemeanor Counts, one Count Resisting Arrest allegedly in violation of 11 *Del. C.* §1257(b) and Disorderly Conduct, 11 *Del.C.* §1301(2). The Resisting Arrest Information alleged that on or about January 27, 2014 in the County of New Castle, State of Delaware the defendant Jeremy C. Watkins did "...intentionally attempt to prevent Michael Fossett of the Wilmington Department of Police from effecting an arrest or detention of himself". The second Count, Disorderly Conduct was subject to a Motion for Judgment of Acquittal which was granted under *Court of Common Pleas Rule 29(a)* following the conclusion of the State's case. For purposes of this Opinion and Order the Disorderly Conduct adjudication matter is now moot.

III. The Facts

The relevant facts are as follows:

Patrolman Jose Vasquez (Officer Vasquez") and Corporal Michael Fossett ("Corporal Fossett") of the Wilmington Police Department, County of New Castle were on routine patrol on Monday, January 27, 2014 at approximately 1100 hours.

Both officers were on proactive patrol in a fully marked Wilmington Police vehicle equipped with emergency lights and a siren in New Castle County.

Corporal Fossett and Officer Vasquez were driving northbound on North Tatnall Street in the City of Wilmington, New Castle County “in the 2600 block” and observed a dark gray colored BMW bearing Delaware tag 33582 proceeding eastbound on West 27th Street. Corporal Fossett observed the motor vehicle in question fail to come to a complete stop located at the corner of West 27th Street and North Tatnall Street. The officers activated their emergency lights in their patrol vehicles at the block of East 27th Street. The motor vehicle in question came to a stop in a parking lot on the Southwest corner of East 27th Street and Carter Streets. This location is the Child Daycare Center which both the driver, Steven B. Wright, and the passenger, Jeremy C. Watkins (the “defendant”) worked and which the driver’s mother owned and operated for some time in the City of Wilmington.

Corporal Fossett approached the passenger’s side of the motor vehicle. Officer Vasquez approached the driver’s side of the vehicle. Officer Vasquez requested Steven V. Wright (“Wright”), the driver for his license, registration and insurance card. Wright refused to provide the motor vehicle documents and questioned why he was being pulled over by a marked Wilmington Police vehicle. According to Corporal Fossett, Wright continued to disregard lawful police orders

to provide proper motor vehicle documentation until defendant was advised what the specific reason was for the traffic stop in question. In the interim, the passenger, defendant Watkins, called the daycare center to inform Wright's mother of the traffic stop. The driver's motor vehicle then approached the location of the stop to protest the stop and questioned the officer's right to stop her son. After multiple orders to disburse, which were refused, Wright's mother was subsequently arrested.

Corporal Fossett testified that Officer Vasquez continued to tell the driver, Wright that he would "gladly explain to him" the reason for the motor vehicle stop but Wright must first provide the motor vehicle documents in question. From the evidence at trial, it appears that Wright never provided Officer Vasquez the relevant motor vehicle documents.

In the interim, Corporal Fossett approached the passenger side of the motor vehicle and observed a partially opened side window. The window was then observed being rolled up while Corporal Fossett who was then approaching the motor vehicle. Corporal Fossett could not gather information from an unobstructed view of the inside of the motor vehicle or its passenger compartment. According to Corporal Fossett, defendant Watkins was given numerous opportunities to comply with his request to roll down the window by knocking on the window several times but Watkins refused. Corporal Fossett then called for

assisting police units. The defendant or Wright then locked the door and refused police officer commands according to Corporal Fossett to roll down the passenger window. Corporal Fossett testified at trial that he knocked several times on the window with no apparent response. The defendant looked “straight ahead” and did not respond to his commands.

Corporal Fossett testified at trial that he had “a lot of concerns” with the driver’s side window being rolled up, including that the driver would not identify himself at the scene of a valid traffic stop. When the window went up, Corporal Fossett testified he also had officer safety concerns, as well as concerns for passenger safety because he now had an obstructed view of the inside of the motor vehicle and a barrier to see the passengers or possible weapons inside the motor vehicle.¹

When the window was not rolled down, two additional officers came to the passenger’s side window. According to Corporal Fossett, defendant Watkins just “sat there” but the door eventually became unlocked. Corporal Fossett testified he made commands for Watkins to exit the motor vehicle. When Watkins attempted to get out of the car, according to Corporal Fossett, the defendant refused lawful commands to do so and the defendant then grabbed onto the door handle jam on

¹ Continue commands by both officers were made to Brenda Mathis to stop interfering with the traffic stop. Again, Corporal Fossett testified at trial this is the reason why back-up officers were called.

the passenger's side, so that Watkins could not be removed from the vehicle. After multiple commands to let go of the door jam, Corporal Fossett told Watkins that he instructed the defendants he would use his police taser if Watkins did not remove himself from the motor vehicle and/or let go of the door jam and place his hands behind his back.

Corporal Fossett testified at trial that he "absolutely had no intention" to arrest Watkins, but was in the process of simply detaining him pending further investigation with other Wilmington Police officers. Corporal Fossett testified the fact that multiple third parties are now on the scene arguing with police officers and questioning their authority to stop the defendant. Watkins' driver, Mr. Wright escalated the situation by refusing to co-operate with his partner and provide the motor vehicle documents.

On cross-examination, Corporal Fossett testified the reason for the traffic stop was that the defendant Wright failed to come to a complete stop. When questioned, Officer Vasquez indicated he was "respectful and polite". Counsel questioned Corporal Fossett whether he should rethink his authority to not tell the defendant Wright why he stopped him before he asked for Wright's driver's license, registration and insurance card. Corporal Fossett testified that it is standard procedure to conduct the stop in the way that he did by requesting the motor vehicle documents. He has trained his recruits exactly the same way.

According to Corporal Fossett defendant was not compliant with his reasonable request to roll down the window and/or exit the motor vehicle. Corporal Fossett testified he knocked on the window at least three (3) times. At some point he placed hand cuffs on Watkins, after informing him he would use his taser if Watkins did not comply with his lawful commands to exit the motor vehicle and release his hands from the door jam.

The defense presented its case-in-chief. Wright was called to testify. Wright has been employed for eight (8) years at the daycare center. He has served in the Marine Corps and was subsequently discharged honorably. Wright has been employed at the daycare center since 2009 to act as a mentor to children because he feels "they need a leader". He recalls the traffic stop on January 27, 2014 at 11:00 a.m. Wright was traveling from breakfast where he purchased meals with Watkins. Wright was driving for the express purpose to bring staff food and breakfast to the daycare and while enroute to the Daycare Center he made a right on 27th street coming from 2601 Carter Street at LJs. Wright eventually plead or found guilty to the traffic stop violation and all other charges were dismissed. Wright observed Wilmington Police at the red light and believed he had, in fact came to a complete stop. Wright came into contact with the Wilmington Police at 27th and Tatnall when the light was green when the officer activated the lights and he pulled into the parking lot. At some point the passenger window went down

and he threw out a cigarette and interacted with Officer Vasquez and questioned “Why am I being pulled over?” According to Wright, Officer Vasquez told him I will tell you the reason after you provide me with the relevant motor vehicle documents. Wright testified Officer Vasquez refused to tell him the reason for the traffic. Wright takes responsibility for rolling up the window on the passenger side. He said the incident was filled with tension and Officer Vasquez “ignored what he was saying” and the situation therefore “escalated”. More Wilmington police officers arrived at the scene and his mother was asked to leave. When the situation increasingly escalated he told Officer Vasquez he was being “unprofessional”. He does not recall Corporal Fossett appearing at the window. He does not recall Watkins rolling up the window as he did it. Wright testified he rolled up the passenger window before the officer approached and he did not see Corporal Fossett at the window.

On cross-examination Wright testified Watkins he was a “true friend” not Watkins and “blood couldn’t make us any closer” “I have worked with Watkins for 2-3 years and we are childhood friends.”

Jeremy C. Watkins (the “defendant”) testified at trial. He met Wright in High School at A.I. DuPont and they had been friends for a “long time”. He was a student at Delaware Technical Community College at Wilmington Skill Center and has a State Certificate for day care. He has participated with the program “the

Talk” which is a course dealing with how to react and interact with police officers in Wilmington. Watkins believes he was taught respect and compliance. He has worked two and a half years at the daycare.

Watkins recalls January 27, 2014 and the stop at 27th and Tatnall and believed his driver, co-defendant stopped at the stop sign. At the same time, hot coffee spilled. Watkins had just purchased sandwiches and hot coffee en-route to the daycare center and his window was down for a short while. Watkins believes Wright put up his window and at some point the door became unlocked. Watkins was on the phone talking to the daycare center and testified he was unaware of Corporal Fossett’s presence. He testified Corporal Fossett at some point attempted to open the door. When it was unlocked he exited the motor vehicle. Watkins testified he had to put his coffee and sandwiches down and stepped out of the car and claims he was pushed by the officers. Watkins testified he put his hands on the frame of the motor vehicle so he would not fall in order to exit.

At this point, he testified “the atmosphere was charged,” and was now aware that Corporal Fossett called for back-up. According to Watkins, Corporal Fossett, when he was attempting to exit the motor vehicle, told him “nigger, don’t do it” and pulled out his taser and had an “aggressive attitude”. Watkins testified he was never told the purpose of why he was asked to exit the motor vehicle.

On rebuttal, Corporal Fossett testified he was “100 percent sure” that he didn’t use any racial slurs. Corporal Fossett testified he knocked on the passenger side window at least two times to get Watkins’ attention to roll down the window. He testified that defendant Wright refused multiple commands and orders to roll down the window and/or exit the motor vehicle in order to detain him.

Corporal Fossett testified on rebuttal that the passenger door was locked and Watkins ignored him and “sat looking straight ahead”. He testified he told Watkins numerous times, at least 4, to “let go of the car door jam”. Corporal Fossett testified he finally pulled his taser and advised Watkins that he would use it if Watkins didn’t release his hands from the door handle of the motor vehicle. Corporal Fossett testified he used “minimum force” and actually did not use his taser or physically knock the window out and clearly reasonable force was used. According to Corporal Fossett, the defendant didn’t exit the motor vehicle after numerous commands. Corporal Fossett testified Watkins refused to acknowledge him when he knocked on the window. According to Corporal Fossett, there was simply “no compliance” by Watkins. Corporal Fossett testified he had no intention to arrest Watkins, but was simply going to detain him after back-up was called and instant scenario had become a “charged situation”. According to Corporal Fossett, the defendant never told him he was putting the coffee back on his seat and if he had, he would have allowed him to do so. The reason for the detention, according

to Corporal Fossett, was the defendant rolled up the window, ignored him, “looked straight forward” and refused to exit the motor vehicle after being ordered four (4) times to do so. Corporal Fossett testified it was a “charged situation” because the driver was also refusing to comply with the lawful orders to produce the necessary motor vehicle documents. The car window was rolled now up with a barrier to see inside the motor vehicle so that he could not see any weapons or individuals inside the motor vehicle and therefore he had “officer safety concerns”.

V. The Law

Eleven *Del.C.* §1257 provides that a person is guilty of resisting arrest when the person intentionally prevents or attempts to prevent a police officer from the effecting arrest or detention of the person or another person, or intentionally fleas from a police officers effecting arrest. An arrest is defined and referred simply to the physical act of arrest and prohibits any resistance thereto regardless of whether the arrest is later determined to be unlawful.²

There is no Fourth Amendment right to resist a lawful arrest.³ Resisting arrest is a common law offense and the refusal of the individual submit to arrest and resisting an officer acting with official law authority constitutes and indictable offense.⁴ When the evidence shows that a police officer had a manifest purpose of

² *Ellison v. State*, Del. Supr. 410 A.2d 519 (1979)(*aff'd* Del. Supr. A.2d 1127 (1981), *cert denied*, 455 U.S. 1026 (1982).

³ *See Ellison v. State*, *supra*.

⁴ *Clar v. State*, Del. 294 A.2d 836 (1972).

taking the person into custody and the defendant resisted, such as by hiding by a bed or physically resisting the officer, a defendant may be guilty of resisting arrest.⁵

The State must prove the charge beyond a reasonable doubt and has the burden of proving each and every element of this subject offense.⁶ “As established law indicates, a reasonable doubt is not a vague, whimsical or merely possible doubt, “but such a doubt as intelligent, reasonable and impartial man or woman may honestly entertain after a conscious consideration of the evidence or want of evidence.”⁷ A reasonable doubt means a substantial, well-founded doubt arising from a candid and impartial consideration of all the evidence or want of evidence.⁸ The word “intentionally” is defined in the Delaware Code, 11 *Del.C.* §232(b).⁹

VI. Discussion

Implicit in this decision is whether the Wilmington Police had the lawful authority to direct a valid traffic stop and conduct the traffic stop according to their police procedures which precipitated the events which caused multiple back-up police officers to be called to the scene.

⁵ *Winborne v. State*, Del. Supr., 455 A.2d 357 1982.

⁶ *State v. Matushefske*, Del. Supr., 215 A.2d 443 (1965); 11 *Del.C.* §301.

⁷ See *Matushefske*, *supra*.

⁸ *State v. Wright*, Del.Gen.Sess., 79 A.8. 399 (1911).

⁹ Intentionally is defined as follows: “A person acts intentionally with respect to an element of the offense when (1) if the element involves the nature of the person’s conduct or a result thereof, it is the person’s conscious effort to engage in conduct of the nature to cause that result; and (2) of the element involves the attendant circumstances, the person is aware of the existence of such circumstances or believes or hopes that they exist. See *State v. Eric Guy*, 1998 Del. Super; LEXIS 220, 1998 WL 438790, Silverman, J. (June 5, 1998); *Ellison v. Sate*, Del. Super., 410 A.2d 519 (Dec. 27, 1979); *State v. Charles M. Fax, Sr.*, 2005 WL 419366, Welch, J. (February 23, 2005).

Multiple inquires were made by defense counsel of Corporal Fossett whether the officers should have revisited the standard procedure to request the driver's license, registration and insurance card of defendant Watkins before indicating the purpose of the stop. Corporal Fossett indicated his reason was so that the officer could identify who the driver of the motor vehicle was and determine whether there were pending criminal charges.

It is also clear that both the defendant Watkins and Wright were sincere, credible witnesses who testified at trial. They have excellent backgrounds to assist the youth in the community. However, the Court finds that it is up to the Wilmington Police Officers, as sworn police officers during their official duties in a marked police vehicle to conduct a traffic stop in the manner that complies with their protocol fully explained at trial. Had Watkins not called the daycare center and/or Wright provided the subject documents, the Court finds that the "charged situation" would not have escalated requiring back-up police officers and the resultant chaos that developed at the traffic scene.

VII. Opinion and Order

Considering the totality of all circumstances, the credibility of the witnesses, as well as the sworn testimony at trial, it is clear to the Court that Corporal Fossett was attempting to detain Watkins for officer safety in order to investigate a valid traffic stop. Corporal Fossett testified he had no intention to arrest Watkins. The

Court finds beyond a reasonable doubt, 11 *Del.C.* §311 that Watkins intentionally attempted to prevent Corporal Fossett from effecting a detention of Watkins by refusing to let go of the door jamb four times to the point Fossett had to thereafter use his taser. Coupled with the sworn testimony and evidence at trial that Watkins, or Wright, rolled up the passenger's side window; refused to acknowledge Corporal Fossett after he repeatedly knocked on the passenger side windows The Court finds Watkins refused a lawful detention "intentionally" as defined in §232(b) of Title 11 Watkins did so after Corporal Fossett expressed a manifest intent to take him into detention. The controlling statute, 11 *Del.C.* §1257(b) include, detention by a sworn police officer and clearly, based up on the sworn testimony evidence presented at trial, the State has proven the instant charge beyond a reasonable doubt. 11 *Del.C.* §301.

This matter shall be scheduled for sentencing with due notice to counsel of record by the Clerk of the Court.

IT IS SO ORDERED this 2nd day of February, 2016.



John K. Welch, Judge

/jb