

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

STATE OF DELAWARE,

v.

JAMES A. MAY,

Defendant.

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Case No. 1308011583

Submitted: January 8, 2014

Decided: January 23, 2014

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DECISION AFTER TRIAL

INTRODUCTION

On August 15, 2013, Defendant James May (hereinafter "Defendant") was arrested and charged with Resisting Arrest in violation of 11 *Del. C.* § 1257(b), Carrying a Concealed Dangerous Instrument in violation of 11 *Del. C.* § 1443(a), and Disorderly Conduct in violation of 11 *Del. C.* § 1301(1)(b). A non-jury trial was held on January 8, 2014, during which five witnesses testified. At the conclusion of the trial, the Court reserved its decision.

FACTUAL BACKGROUND

The State's witness was Corporal Aaron Metzner (hereinafter "Corporal Metzner") of the Wilmington Police Department. Corporal Metzner testified that on August 15, 2013, he had just completed roll call and was starting his patrol when he ran the license plate of a motorcycle and determined that the plate was not associated with the motorcycle. Corporal Metzner followed the motorcycle to a parking lot of the River Commons Apartment Complex. Corporal Metzner inquired with a woman, later identified as Rozlyn Payne,¹ as to the motorcycle's owner. Corporal Metzner testified that he was planning on having the motorcycle towed from the property. Payne proceeded back into the building, and at approximately the same time, a group of individuals, including Defendant, exited the building. One of the individuals was the driver of the motorcycle, later identified as Marvin Harper.² Corporal Metzner asked Harper for his license and registration approximately three to four times before Harper produced the items. Harper testified that he questioned Corporal Metzner's purpose for requesting his information, as Harper was not the owner of the motorcycle, and he did not understand why Corporal Metzner was going to tow it. Harper eventually provided the requested materials, and Corporal Metzner returned to his patrol car to record the information.

While Corporal Metzner was in his patrol vehicle, Defendant, who was standing with a group of approximately three other people in the parking lot, began telling Harper to get Corporal Metzner's badge number.³ Corporal Metzner testified that Defendant was yelling, while Harper and Payne testified that Defendant remained calm. Corporal Metzner testified that he grew annoyed with Defendant's alleged yelling, so he exited his vehicle, walked over to Defendant, stuck his chest out to put his badge in close proximity to Defendant's face, and told Defendant that he could write

¹ Payne is the Senior Resident Manager of River Commons. She testified at trial on behalf of the Defense.

² Harper is a maintenance worker for River Commons. He too testified at trial on behalf of Defense.

³ Harper's testimony at trial revealed that he did not like the way Corporal Metzner handled the towing issue, and he wanted Corporal Metzner's information for future reference.

down the badge number. Corporal Metzner testified that Defendant began calling him a “clown,” and told him (Corporal Metzner) to “get the f --- out of my face.” Payne, Harper, and Defendant confirmed through testimony that Defendant called Corporal Metzner a “clown,” but they all denied that Defendant used profanity. Payne and Harper also testified that at this time, Defendant spoke in a calm tone and kept his hands in his pockets, while Corporal Metzner appeared agitated and aggressive. Corporal Metzner testified that he decided to arrest Defendant for disorderly conduct. Corporal Metzner asked Defendant if he had any identification. Defendant produced an identification card, held it up, and then returned it to his pocket without handing it to Corporal Metzner. Corporal Metzner testified that he placed Defendant under arrest and grabbed Defendant’s arm, but the Defendant pulled away and proceeded to walk around in circles. Both Payne and Harper testified that Defendant did not resist arrest, nor did he run from the police. Corporal Metzner testified that he called for backup and approximately 20-30 officers responded. As the police proceeded to arrest Defendant, they discovered a 4.5” serrated knife clipped to Defendant’s right pocket.

THE LAW

The State must prove every element of each offense charged beyond a reasonable doubt.⁴ “Reasonable doubt does not mean a vague, speculative doubt, nor a mere possible doubt, but a substantial doubt; it is such a doubt as intelligent, reasonable and impartial men may honestly entertain after a careful and conscientious consideration of the evidence in the case.”⁵

⁴ 11 *Del. C.* § 301(b).

⁵ *State v. Matushefske*, 215 A.2d 443, 449 (Super. Ct. 1965).

“If the Court finds the evidence to be presented in conflict...it is the Court’s duty to reconcile these conflicts....If the Court cannot do this, the Court must give credit to the portion of the testimony which...is most worthy of credit and disregard any portion...unworthy of credit.”⁶

The Court may not deem a witness to be more worthy of credit simply because of the witness’ affiliation with a law enforcement organization.⁷ To deem a witness more or less credible there must be some basis to do so drawn from the evidence or from their behavior and demeanor.⁸ If the testimony is in conflict and the witnesses are equally credible, without more, the verdict must be not guilty.⁹

DISCUSSION

Pursuant to 11 *Del. C.* § 1257(b), “[a] person is guilty of resisting arrest when the person intentionally prevents or attempts to prevent a peace officer from effecting an arrest or detention of the person...or intentionally flees from a peace officer who is effecting an arrest.”

Corporal Metzner testified that after he notified Defendant that he was under arrest, Corporal Metzner grabbed Defendant’s elbow, but Defendant pulled away and began walking in circles. Defendant testified that Corporal Metzner did not tell him that he was under arrest, but that after Corporal Metzner summoned other officers for backup, the officers held his hands behind his back and pushed him into the police vehicle. Defendant testified that he did not resist arrest, nor did he pull his arm away when the officers grabbed it. Defendant’s testimony was supported by Payne’s and Harper’s testimony. Both witnesses testified that Defendant had a calm demeanor during his interaction with Corporal Metzner, and that he kept his hands in his pockets the entire

⁶ *State v. Henderson*, 2005 WL 2249086 at *3 (Del.Com.Pl. September 13, 2005).

⁷ *United States v. Bethancourt*, 65 F.3d 1074, 1080 (3d Cir. 1995); *United States v. Howard*, 787 F.Supp.2d 330,332 (D.N.J. 2011) (quoting *United States v. Murphy*, 402 F.Supp.2d 561, 569-70 (W.D.Pa, 2005)); *United States v. Conley*, 859 F.Supp. 830, 840-41 (W.D.Pa. 1994).

⁸ *State v. Westfall*, 2008 WL 2855030, at *3 (Del. Com. Pl. Apr. 22, 2008); *Howard*, 787 F.Supp.2d at 332; *Murphy*, 402 F.Supp.2d at 569; *see Del. P.J.I. Civ. #23.9* (2000) (Credibility of Witnesses);

⁹ *Flowers v. Jones*, 2001 WL 34075406, at *1 (Del.Com.Pl. Nov. 6, 2001); *State v. Greene*, 1999 WL 1847356, at *3 (Del.Com.Pl. Sept. 8, 1999); *State v. Thomas*, 1999 WL 1847419, at *3 (Del.Com.Pl. Jan14, 1999).

time, except for the moment when he showed his identification to Corporal Metzner. Payne testified that Defendant offered no resistance after an officer grabbed his arm and held him down on a police car. Harper testified that he did not recall Defendant resisting arrest, as he saw no running, and no physical interaction between Defendant and the police.

The Court, as the trier of fact, determines the credibility of testifying witnesses. With respect to the issue of whether Defendant pulled his arm away from an arresting officer, the Court finds the witnesses equally credible. Other than the officer's employment, there was no basis to find him more credible, and in contrast, the Court finds no basis to find Defendant and the witnesses for the Defense less worthy of credit. Thus, the Court cannot conclusively determine whether Defendant pulled away from the police, or whether he remained calm and cooperative. The State produced no further evidence supporting this charge, and therefore the State failed to prove the necessary elements of Resisting Arrest beyond a reasonable doubt.

Under 11 *Del. C.* § 1443(a), “[a] person is guilty of carrying a concealed dangerous instrument when the person carries concealed a dangerous instrument upon or about the person.” A concealed dangerous instrument is “any instrument, article or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury.”¹⁰

Corporal Metzner testified that after officers arrested Defendant, a pat-down revealed that Defendant had clipped to his pocket an approximately 4.5-inch ½ serrated knife. Defendant testified that on August 15, 2013, he had clipped the knife to his right pocket. Defendant testified that the blade was located outside his pocket, as he recalls it dangling. Witness testimony confirmed that Defendant carried a “utility” knife with him to perform his work for the apartment complex, such as cutting through boxes and carpet. Harper testified on cross-examination that he

¹⁰ 11 *Del. C.* § 222(4).

and his co-workers also carried such knives for work purposes. Witness testimony at trial was conflicted as to whether Defendant's knife was clipped to the inside or outside of his pocket. Testimony did reveal, however, that even if the knife was clipped to the inside of the pocket, the clip was still visible on the outside of Defendant's pocket. The Court also finds that at least a portion of the knife would be visible regardless of whether it was inside or outside the pocket. The State needed to prove beyond a reasonable doubt that the knife was concealed at the time the police discovered it. The Court finds that the knife was not concealed at the time of Defendant's arrest, as the clip was visible on the outside of Defendant's pocket, and that at all times, at least a portion of the knife was visible.

Pursuant to 11 *Del. C.* § 1301, "[a] person is guilty of disorderly conduct when: (1) the person intentionally causes public inconvenience, annoyance or alarm to any other person, or creates a risk thereof by... (b) making an unreasonable noise or an offensively coarse utterance, gesture or display, or addressing abusive language to any person present."

In addition to considering actual language, the Court must consider the circumstances in which the language is used. "Profane language does not rise to the level of disorderly conduct when [it] is not directed against anyone, does not annoy, alarm, or inconvenience anyone, or cause any violence or breach of the peace,"¹¹ as "such language... 'essentially amount[s] to bad manners.'"¹²

According to uncontradicted witness testimony, Defendant responded to Harper's agitation over the police officer's behavior by repeatedly telling Harper to get Corporal Metzner's badge number during the time Corporal Metzner was recording Harper's identification information. Both Harper and Payne stated that Defendant was not agitated, nor was he yelling at this time, but that he was calm. All testimony was consistent that Harper and not the Defendant wanted the badge

¹¹ *State v. Keiper*, 2010 WL 1424378, at *1 (Del.Com.Pl. Mar. 24, 2010) (citing *State v. Cooper*, 2004 WL 3312525 (Del.Com.Pl. Sept. 28, 2004)).

¹² *Keiper*, 2010 WL 1424378, at *1 (quoting *State v. Cooper*, 2004 WL 3312525, at *3).

number. Nevertheless, the officer felt it appropriate to confront the Defendant. Testimony revealed that after Defendant told Harper to get the badge number multiple times, Corporal Metzner exited his vehicle, approached Defendant, and manipulated his body in such a way that his badge was in close proximity to Defendant's face. Payne and Harper testified that at this point, Corporal Metzner acted in an agitated and aggressive manner. Corporal Metzner testified that the Defendant's presence was interfering with his investigation, and then testified on cross-examination that Defendant's interference was annoying.

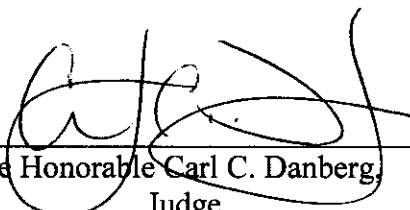
Corporal Metzner testified that nothing about the Defendant's conduct was disorderly until he repeatedly called him a clown and used profanity. At the time of the interaction between Corporal Metzner and Defendant, approximately four or more people were present. Payne and Harper testified that they heard Defendant call Corporal Metzner a "clown" multiple times during the interaction, while Corporal Metzner testified that in addition to Defendant calling him a "clown" multiple times, Defendant used profanity at least once. Defendant, during his testimony at trial, denied using profanity. Corporal Metzner testified that the Defendant's alleged use of profanity, combined with the arrival of more individuals as the Defendant allegedly grew more agitated, served as the basis for Defendant's arrest. The Defense witnesses did not testify that the interaction between Corporal Metzner and Defendant caused them any alarm. They testified that Defendant remained calm, and that it was Corporal Metzner who acted agitated even prior to the face-to-face interaction. Further, they testified that the only individuals present were the witnesses called for the Defense. Therefore, Defendant's singular use of profanity, when taken in context of the situation and in consideration of the witness testimony, did not rise to the level of disorderly conduct in that it was likely to provoke a violent response. The witnesses at trial offered conflicting testimony as to the alleged disorderly conduct, but possessed equal credibility. Thus, without more evidence to

support the charge, the State has failed to meet its burden to prove beyond a reasonable doubt that Defendant engaged in disorderly conduct prior to his arrest.

CONCLUSION

The State has failed to meet its burden to prove beyond a reasonable doubt that Defendant Carried a Concealed Deadly Instrument pursuant to 11 *Del. C.* § 1443(a), that Defendant Resisted Arrest pursuant to 11 *Del. C.* § 1257(b), and that Defendant engaged in Disorderly Conduct pursuant to 11 *Del. C.* § 1301(1)(b). Thus, the Court finds Defendant James A. May **NOT GUILTY**.

IT IS SO ORDERED THIS 23rd day of January, 2014.



The Honorable Carl C. Danberg
Judge

cc: Juanette West, Supervisor Criminal Division