SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5549-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

DEAN FRASIER,

Defendant-Appellant.

Submitted October 17, 2017 – Decided December 28, 2017

Before Judges Fasciale and Moynihan.

On appeal from Superior Court of New Jersey, Law Division, Hudson County, Indictment No. 14-04-1100.

Joseph E. Krakora, Public Defender, attorney for appellant (Michael Denny, Assistant Deputy Public Defender, of counsel and on the brief).

Robert D. Laurino, Acting Essex County Prosecutor, attorney for respondent (Camila Garces, Special Deputy Attorney General/ Acting Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant appeals from his conviction for disorderly persons resisting arrest, N.J.S.A. 2C:29-2(a)(1).[1] He contends the trial judge erred by denying his motion for judgment of acquittal, arguing, in a single point:

> EVEN WHEN VIEWED IN THE LIGHT MOST FAVORABLE TO THE STATE, THE EVIDENCE DID NOT ESTABLISH BEYOND A REASONABLE DOUBT THAT [DEFENDANT] PURPOSELY RESISTED ARREST, AND HIS MOTION FOR [JUDGMENT OF] ACQUITTAL SHOULD HAVE BEEN GRANTED.

We conclude, viewing the State's evidence under the applicable standard, a reasonable fact finder could find defendant guilty of the offense of resisting arrest beyond a reasonable doubt, and affirm.

A judge considering a defendant's motion "[a]t the close of the State's case or after the evidence of all parties has been closed . . . shall . . . order the entry of a judgment of acquittal of one or more offenses charged . . . if the evidence is

[1] The original indictment charged fourth-degree aggravated assault, N.J.S.A. 2C:12-1(b)(5)(a) (Count One); third-degree terroristic threats, N.J.S.A. 2C:12-3(b) (Count Two); and third-degree resisting arrest, N.J.S.A. 2C:29-2(a)(3)(a) (Count Three). An amended indictment was filed the day before the scheduled trial, charging disorderly persons simple assault, N.J.S.A. 2C:12-1(a) (Count One); disorderly persons menacing, N.J.S.A. 2C:12-1(a)(3) (Count Two); and disorderly persons resisting arrest, N.J.S.A. 2C:29-2(a)(1) (Count Three). The judge found defendant not guilty of simple assault and menacing, but found defendant guilty of resisting arrest.

insufficient to warrant a conviction." R. 3:18-1. The familiar standard to be applied by trial judges

> is whether, viewing the State's evidence in its entirety, be that evidence direct or circumstantial, and giving the State the benefit of all its favorable testimony as well as all of the favorable inferences which reasonably could be drawn therefrom, a reasonable jury could find guilt of the charge beyond a reasonable doubt.
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> [State v. Reyes, 50 N.J. 454, 458-59 (1967).]

In reviewing a motion for judgment of acquittal at the close of the State's case pursuant to Rule 3:18-1, we use the same Reyes standard as the trial judge. State v. Johnson, 287 N.J. Super. 247, 268 (App. Div. 1996); State v. Tarver, 272 N.J. Super. 414, 424-25 (App. Div. 1994).

The elements the State must prove in order to convict a defendant of disorderly persons resisting arrest are:

> 1. That [the person effecting the arrest] was a law enforcement officer.
>
> 2. That [the person] was effecting an arrest.
>
> 3. That defendant knew or had reason to know that [the person] was a law enforcement officer effecting an arrest.
>
> 4. That defendant purposely prevented or attempted to prevent [the person] from effecting the arrest.

[Model Jury Charges (Criminal), "Resisting Arrest – Flight Not Alleged (N.J.S.A. 2C:29-2(a))" (rev. May 7, 2007).]

Judge Martha T. Mainor[2] conducted a bench trial because the reduced charges against defendant were disorderly persons offenses.[3] At the close of the evidence, she accurately synopsized the evidence adduced.[4] Officer Sobocinski – who effected the arrest – was in uniform and wearing a badge; he was "recognizable as law enforcement." The officer, after an earlier encounter with defendant, waited with two other officers for defendant to exit a men's restroom. When defendant exited, the officer approached, and defendant directed a profanity-laced utterance toward him that the officer perceived as a threat. The judge found, "at that moment it was the intention of the officers" to effect defendant's arrest.

The evidence introduced by the State's witnesses supported Judge Mainor's conclusion that defendant knew or had reason to

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[2] Judge Mainor, at the time this case was before her, was known as Martha T. Royster.

[3] See N.J.S.A. 2C:1-4(b) (providing, "[t]here shall be no . . . right to trial by jury on [disorderly persons] offenses").

[4] Although defendant appeals Judge Mainor's order denying his motion for judgment of acquittal, we cite to her decision at the close of the trial because it accurately reflects the testimony of the State's witnesses.

know Sobocinski was an officer who was effecting defendant's arrest because of defendant's prior encounter with Sobocinski; Sobocinski's uniform and badge; the presence of the other two officers; and the officers' announcement that they were arresting defendant prior to defendant's resisting.

The evidence adduced as to the fourth element counters defendant's present argument that the State's evidence did not prove defendant "purposely attempted to prevent Sobocinski from arresting him." Defendant contends the State's proofs failed because Sobocinski could not remember the position of defendant's hands or arms while he was trying to arrest defendant. Defendant asserts, "The lack of detail regarding the movement of [defendant's] arms relates directly to the misremembered circumstances of the police tackle, and taken together cannot constitute proof beyond a reasonable doubt." The judge acknowledged Sobocinski's lack of recall regarding the location of defendant's hands, but noted:

> [W]hat he does remember, specifically, is that he attempted to put [defendant's] hands behind his back, identified himself as a pretty strong guy and recognized that he was bigger than [defendant], and acknowledged that if he had that difficulty in pulling [defendant's] arms behind him, irrespective of where they were located, that it was clear to him that at that time [defendant] was resisting arrest.

The judge concluded, "by refusing to put his hand behind his back, and preventing his hands from being put behind his back, [defendant] was attempting to prevent the officer from [e]ffecting the arrest."

Affording the State the benefit of "all its favorable testimony as well as all of the favorable inferences which reasonably could be drawn therefrom," Reyes, 50 N.J. at 459, we conclude that a reasonable trier of fact could find defendant guilty of resisting arrest beyond a reasonable doubt. The judge properly denied defendant's motion for judgment of acquittal as to the resisting charge.

Affirmed.