

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
September 24, 2024 Session

FILED

12/03/2024

Clerk of the  
Appellate Courts

**STATE OF TENNESSEE v. DAVID ALEXANDER HAYES<sup>1</sup>**

**Appeal from the Criminal Court for Knox County  
No. 123845 Hector I. Sanchez, Judge**

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**No. E2023-01800-CCA-R3-CD**

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The Defendant, David Alexander Hayes, was convicted by a Knox County Criminal Court jury of resisting arrest, a Class B misdemeanor. *See* T.C.A. § 39-16-602 (2018). The Defendant was sentenced to ninety days' probation. On appeal, he contends that the evidence is insufficient to support his conviction. We affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

ROBERT H. MONTGOMERY, JR., J., delivered the opinion of the court, in which JILL BARTEE AYERS, J., joined. CAMILLE R. MCMULLEN, P.J., filed a dissenting opinion.

Dillon E. Zinser (on appeal and at trial) and Holly Zinser-Nehls (at trial), Knoxville, Tennessee, for the appellant, David Alexander Hayes.

Jonathan Skrmetti, Attorney General and Reporter; Courtney Orr and Christian N. Clase, Assistant Attorneys General; Charme P. Allen, District Attorney General, William Bright and Amelia Hamilton, Assistant District Attorneys General, for the appellee, State of Tennessee.

**OPINION**

This case arises from the Defendant's attendance at a January 7, 2022 Knoxville public meeting regarding the selection of a new Knoxville Police Chief. The Defendant was indicted for assault and resisting arrest. The jury was unable to reach a verdict for the assault allegation, and the trial court dismissed the charge. However, the jury found the Defendant guilty of resisting arrest.

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<sup>1</sup> The record reflects that at the time of the trial, the Defendant was in the process of changing his name to Nzinga Amani. We use the name listed in the indictment.

At the trial, Knox County Sheriff's Department Court Officer Ronald Chaperon, Jr., testified that he worked in the court services division and that on January 7, 2022, he attended, as part of his duties, a public meeting at the City-County Building. He said that the Defendant, with whom he was familiar, attended the meeting and that he learned and verified the Defendant had an outstanding arrest warrant. Officer Chaperon stated that he did not interrupt the meeting and waited for the Defendant to leave the meeting room before approaching the Defendant.

A building surveillance recording was received as an exhibit and played for the jury.<sup>2</sup> In the relevant portion of the recording, which was less than two minutes long in length, the Defendant and the law enforcement officers move into the camera's view. The Defendant's hands were in handcuffs behind the Defendant's back, and three officers carried the Defendant, who did not walk. A group of people who displayed their cell phones followed the Defendant and the officers down the hallway. The officers stopped carrying the Defendant and placed the Defendant on the floor, and after a few seconds, the officers resumed carrying the Defendant. At times, the group of people obscured the view of the Defendant and the officers. The officers continued to carry the Defendant until they moved out of the camera's view when entering what other evidence showed was the court services office.

In another relevant portion of the building surveillance recording, officers carried the Defendant out of the court services office. The Defendant wore what other evidence showed was a "spit mask" and walked down the hall. The officers escorted the Defendant down a hallway, and the Defendant stood against the wall. One officer held the Defendant around the head and neck area and, later, by the left shoulder, while another officer held the Defendant's right side against the wall. Another officer exchanged the handcuffs worn by the Defendant, while two additional officers watched. The Defendant did not struggle with the officers. An officer adjusted the spit mask around the Defendant's head. Afterward, the Defendant and the officers walked down the hallway and out of the camera's view. Still photographs obtained from the recording were likewise received as exhibits.

Officer Chaperon testified that the public meeting was held in the small assembly room and that he and "Officer Coffey" waited for the Defendant to leave the meeting. Officer Chaperon said that he approached the Defendant as the Defendant left the assembly room, that he told the Defendant there was a warrant for his arrest, that he placed his hand on the Defendant's arm, and that the Defendant "kind of turned from me and then went to the ground immediately." Officer Chaperon said that the Defendant was not pushed nor thrown onto the ground and that the Defendant went to "the ground on his own." Officer Chaperon said that a group of approximately eight people who had attended the meeting surrounded him, Officer Coffey, and the Defendant. Officer Chaperon said that the Defendant yelled for people inside the assembly room and yelled, "Why am I being

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<sup>2</sup> The video recording lacked audio.

arrested?” Officer Chaperon said that the group of people “started circling around,” which created a concern for officer safety, as he and Officer Coffey attempted to handcuff the Defendant.

Officer Chaperon testified that the Defendant was commanded multiple times to stand and to walk but that he did not comply. Referring to the surveillance recording, Officer Chaperon said that he and Officer Coffey wrapped their arms around the Defendant and that they carried the Defendant to the court services office. Officer Chaperon recalled that the Defendant went “limp at his feet” and was unwilling to walk and that the Defendant repeatedly stated, “I’m going to make you earn your pay.” Officer Chaperon said that he and Officer Coffey “paused and . . . went to the ground” with the Defendant to “readjust” and that they continued to instruct the Defendant, who did not comply, to stand and walk.

Officer Chaperon testified that, pursuant to department policy, the Defendant was taken to the court services office and that the group of people who had encircled Officers Chaperon and Coffey followed behind. Officer Chaperon said that they placed the Defendant on the floor at least three times and gave the Defendant commands to stand and walk. Officer Chaperon said that after they entered the office, Defendant complied with his instructions to stand and sit on a chair. Officer Chaperon stated that the Defendant stood twice, that he approached the Defendant, that the Defendant “started to go down and . . . kick[ed] the computer equipment,” and that the Defendant attempted to kick “everything off of the desk.” Officer Chaperon said that as he “got closer” to the Defendant, the Defendant “spit in my face.” Officer Chaperon recalled that the saliva landed on the bottom portion of his mustache and inside his mouth. He said he expressed his shock, walked toward the Defendant, and turned and held the Defendant’s face with his forearm against the wall to prevent additional spitting. Officer Chaperon said that he told the Defendant not to spit anymore, that he began to release the Defendant, that the Defendant started to spit again, and that the Defendant called Officer Chaperon “an effing pig.” Officer Chaperon said that a spit mask was brought to the office from the downstairs jail and placed on the Defendant to prevent additional spitting.

Officer Chaperon testified that when officers attempted to escort the Defendant downstairs to the jail, the Defendant refused to walk and that officers carried the Defendant. Officer Chaperon said that the Defendant was placed on the ground in order to exchange handcuffs, which was customary, and noted that if a person cooperated, the handcuffs were placed in front of the person, rather than behind the person’s back. He said that the Defendant began walking, although the Defendant was “pushing back . . . a little.” Officer Chaperon said the Defendant cooperated from that point forward.

Officer Chaperon testified that immediately following the incident, he began medical protocols due to the Defendant’s saliva entering his mouth. Officer Chaperon said that he underwent bloodwork for six to twelve months to ensure he did not contract a communicable disease. He said the incident made him “nervous just for [his] health.”

On cross-examination, Officer Chaperon testified that the Defendant did not possess weapons at the time of the arrest. Officer Chaperon said that he recognized the Defendant from previous interactions and that his supervisors told him about the outstanding arrest warrant and to serve the warrant after the meeting. Officer Chaperon said he did not know the circumstances of the charged offense in the arrest warrant. He said that during the public meeting, the Defendant did not create a disturbance. Officer Chaperon denied that he had the discretion to issue a citation and release the Defendant and said that the outstanding arrest warrant required him to place the Defendant in custody.

Officer Chaperon testified that he called the Defendant's name, that he told the Defendant an active arrest warrant existed, and that he asked the Defendant to place his hands behind his back. Officer Chaperon said that he placed his hand on the side of the Defendant's arm, that he spoke to the Defendant as he moved toward the Defendant's arm, and that the Defendant did not attempt to flee and did not possess any weapons. Officer Chaperon agreed that as he and two additional officers carried the Defendant toward the court services office, the Defendant repeatedly asked what charge was listed in the warrant and that the Defendant was told an officer would review the warrant with the Defendant after they were inside the court services office. Officer Chaperon said that although an officer held the Defendant's legs in order to place handcuffs on the Defendant, none of the officers tied the Defendant's legs. Officer Chaperon said that he held the Defendant "under his arm and his sweatshirt" and that the Defendant did not complain of having difficulty breathing.

Officer Chaperon testified that three officers were inside the court services office and that the office did not contain video surveillance cameras at the time of the incident. He did not take photographs inside the office. He said that the Defendant was inside the office approximately ten to fifteen minutes before the Defendant was escorted to the downstairs jail. Officer Chaperon denied that he placed his hand around the Defendant's neck during the escort and said that he held the Defendant "around his arm and . . . on his sweatshirt." Officer Chaperon admitted that in 2014, he had been placed on administrative leave with pay from the "police force" for the use of excessive force but that he was "cleared" in the incident.

On redirect examination, Officer Chaperon testified that as a court services officer, his role was to "keep order" and maintain safety inside the building and that he did not investigate criminal activity. He said that after the Defendant spit on him, he became concerned about the safety of the officers inside the court services office. Officer Chaperon recalled that the Defendant was "highly upset" and verbally abusive.

Photographs were received as exhibits and depicted the entrance to the court services office, the officers carrying the Defendant after the Defendant was placed in handcuffs, and the officers carrying the Defendant into the court services office.

Knox County Sheriff's Department Court Officer Janette Jolman testified that she worked inside the court services office and that she performed administrative duties, including verifying outstanding arrest warrants, "start[ing] the initial process of new arrestees," and coordinating transportation to the detention facility for booking. She said that on January 7, 2022, she worked inside the court services office and that she learned from her supervisor the Defendant was inside the building. She said she verified that the Defendant had an outstanding arrest warrant. She said that she began to complete her initial report while waiting for the Defendant to be brought to the court services office.

Officer Jolman identified herself in the building surveillance recording and testified that she opened the court services office door because the officers were carrying the Defendant. She said that, initially, the Defendant lay on the floor, that he was told to stand and sit on a chair, and that he "kicked his legs out and laid fighting." She recalled that the Defendant stated, "I'm going to make you earn it." She said that Officers Chaperon and Coffey realized the Defendant was not going to comply and that the officers lifted the Defendant and placed him on a chair. She described the Defendant as not "physically fight[ing]" but as "just being physically noncompliant." She said that the Defendant was not "active[ly] aggressive."

Officer Jolman testified that the Defendant inquired about the officers' treatment and that the officers explained to the Defendant that he was not complying and was "physically resisting." Officer Jolman explained that "[p]hysically resisting" did not necessarily require a person to "be aggressively or attacking somebody." She explained that resisting meant that the person was "being physical, resistant," and "noncompliant." She said that if a person chose not to walk, the person would be carried in order to transport the person from one place to another. She said that after this information was explained to the Defendant, the Defendant said the officers smelled like pigs. She said that the officers were "pretty calm" during the incident and did not react to the Defendant's tauntings. She said that the Defendant turned and looked at Officer Chaperon and that the Defendant made a sound like he was preparing to spit. She recalled that Officer Chaperon "kind of lunged and used his arm . . . and turned [the Defendant's] face and pushed [the Defendant] against the wall." She said that the Defendant spat but that she did not see "where it physically landed." She said that after the Defendant's face was against the wall, the Defendant continued to make the spitting noise and that she moved in order to prevent the Defendant from spitting on her. She said she asked Officer Coffey to retrieve a spit mask.

Officer Jolman testified that the Defendant continued to be uncooperative and taunted the officers into "some kind of response." She recalled that the Defendant said, "You hit like a b---[.] You take these cuffs off[,] we'll see how tough you are." She said that none of the officers responded to the Defendant's statements and that the Defendant kicked her computer and attempted to "take his toe and pull [the] printer off."

On cross-examination, Officer Jolman testified that the offense listed on the warrant was a “non-factor” for purposes of taking the Defendant into custody. She said that when an outstanding warrant “comes to us,” she did not have the discretion to issue a citation in lieu of arresting a defendant. She said that at the time of the incident, the court services office did not have surveillance cameras. She said that she did not know what occurred before the Defendant was carried into the court services office.

Retired Knox County Sheriff’s Department Court Officer David Cunningham testified that a Knoxville Police Department lieutenant advised him that the Defendant, who had an outstanding arrest warrant, might attend the public meeting. Mr. Cunningham said that he verified the outstanding arrest warrant and the Defendant’s signature on the meeting sign-in sheet. Mr. Cunningham said that the officers delayed arresting the Defendant until after the meeting.

Mr. Cunningham testified that as the Defendant left the public meeting room, court officers told the Defendant that there was an outstanding arrest warrant and asked the Defendant to place his hands behind his back. Mr. Cunningham said that the Defendant “threw himself on the floor,” that the officers told the Defendant to roll over, and that the Defendant yelled “for his people . . . inside the meeting to come help him.” Mr. Cunningham said that the Defendant repeatedly asked about the charge listed on the warrant and that the officers told the Defendant that the officers would “explain everything” when they reached the court services office. Mr. Cunningham said that the Defendant refused to walk, that the Defendant said the officers were “going to have to earn it,” and that the officers carried the Defendant to the court services office. Mr. Cunningham said that the officers stopped carrying the Defendant three or four times to provide the Defendant with the opportunity to walk and, alternatively, to give a break to the officers carrying the Defendant.

Mr. Cunningham testified that after the officers and the Defendant were inside the court services office, the Defendant began “kicking over the computer desk and trying to knock the computer off the table and stuff like that.” Mr. Cunningham said that because of the Defendant’s behavior, Officer Chaperon held down the Defendant and that the Defendant made spitting sounds. Mr. Cunningham said that although he did not see the Defendant spit on Officer Chaperon, he heard the spitting noise and saw the saliva fall from Officer Chaperon’s face. Mr. Cunningham said the Defendant stated that the Defendant did not intend to spit on Officer Chaperon’s face. Mr. Cunningham said that a spit mask was placed on the Defendant and that the Defendant was escorted to the downstairs jail. Mr. Cunningham said that after the Defendant and the officers were “out of camera range of his friends” outside the office, the Defendant walked voluntarily.

On cross-examination, Mr. Cunningham testified that, pursuant to policy, court officers did not discuss the criminal offense in an arrest warrant at the time of an arrest. He said that the offense would have been discussed inside the court services office. Mr.

Cunningham said that although he had been concerned about officer safety during the arrest because of the group of people surrounding the officers and the Defendant, nobody attempted to take the officers' guns. Mr. Cunningham said that he did not observe Officer Chaperon holding the Defendant by his jacket collar and that Mr. Cunningham did not hear the Defendant complaining about having difficulty breathing while the officers carried the Defendant. A photograph of the officers carrying the Defendant toward the court services office was received as an exhibit. Referring to the photograph, Mr. Cunningham stated that Officer Chaperon carried the Defendant by the arm and by the corner of the Defendant's sweatshirt.

Photographs of the Defendant, who wore a spit mask, were received as an exhibit. Referring to the photographs, Mr. Cunningham said that the photographs were obtained from the building security system and showed the Defendant being escorted toward the downstairs jail. Mr. Cunningham said that initially, the Defendant refused to walk toward the jail and that the officers had to carry the Defendant. Mr. Cunningham said, though, that after turning the corner in the hallway, the Defendant began to walk voluntarily. Referring to another photograph, Mr. Cunningham said that the Defendant's handcuffs were exchanged because court services officers and jail officers each used their own handcuffs. Mr. Cunningham said that Officer Chaperon held the back of the Defendant's head as the handcuffs were exchanged.

Tyler Givens testified for the defense that he and the Defendant were "casual friends" and that they had attended several political events, including one at the Defendant's home. Mr. Givens said that he attended the public meeting on the day of the Defendant's arrest, that nobody at the meeting was disruptive, and that he saw a couple of deputies look at the meeting sign-in sheet. Mr. Givens said that after he left the meeting, he conducted an on-camera interview of two city officials about the process for selecting a new police chief and that he saw an officer place the officer's hand on the Defendant. Mr. Givens said he recorded the incident with his camera.

Mr. Givens testified that the incident was chaotic and that the Defendant was on the ground by the time Mr. Givens began recording the incident. Mr. Givens said that several officers "piled on top," that the officers shouted for the Defendant to stand, and that the Defendant "might have had an opportunity to stand" but did not stand. Mr. Givens said that the incident occurred quickly but that he did not observe the Defendant "struggle or resist in any way." Mr. Givens said that he did not see the Defendant use force against the officers and that the Defendant did not "swing" or kick. Mr. Givens thought the officers were "a little excessively rough" on the Defendant and said that while the Defendant lay on his stomach, one officer bent the Defendant's legs at the knees and pushed the Defendant's legs into the Defendant's back. Mr. Givens said that the Defendant's hands were already behind the Defendant's back when the officer bent the Defendant's legs.

Mr. Givens testified that the officer who held the Defendant's arm told the Defendant to place the Defendant's hands behind the Defendant's back, that either the Defendant or the officer placed the Defendant's arms behind the Defendant's back, and that the Defendant did not "jerk back or anything." Mr. Givens said that the Defendant shouted a few times because he wanted to know about the warrant and the reason for the arrest. Mr. Givens said that several attendees of the public meeting came to the Defendant's location and began recording with their cell phones. Mr. Givens said that none of the attendees were violent and that although "some people" were close to the officers, everyone was at least a few feet from the officers. Mr. Givens said that some people asked the officers what was happening and why the Defendant was being arrested.

Mr. Given's video recording of the incident was received as an exhibit and was played for the jury. Mr. Givens acknowledged that he was unable to record how the Defendant came to lay on the ground. The recording reflects that the Defendant lay on his back while on the ground yelling, "Why are you arresting me?" Three officers were over the Defendant, and the officers rolled the Defendant onto his stomach. One officer held the Defendant's right arm or wrist. Although the Defendant's legs and a portion of his right arm were visible, view of the Defendant's torso and left arm was obstructed by the officers. An officer instructed the Defendant to place the Defendant's hands behind the Defendant's back. The Defendant continued to yell, "Why are you arresting me?" An officer held onto the Defendant's right wrist, and the Defendant pulled his right wrist from the officer's grip, causing an audible sound when the Defendant's arm made contact with the floor. An officer instructed the Defendant to place the Defendant's hands behind the Defendant's back, and the Defendant continued to yell at the officers. Two officers pulled the Defendant's arms behind the Defendant's back, and a third officer bent the Defendant's legs toward the Defendant's back. An officer stated, "Stop resisting." The Defendant stated he was not resisting and yelled, "I'm just sitting on the ground." A fourth officer provided handcuffs to an officer, and the Defendant demanded to know why the officers had him "tied up like this." Once the Defendant's arms were behind his back, he did not struggle as he was placed in handcuffs, although he continued to yell at the officers. The Defendant yelled, "This is inhumane." The officer who placed the handcuffs on the Defendant told the Defendant to "stay like that." After the Defendant was placed in handcuffs, the officers told people who had gathered around the officers to back away. The officer, who held the Defendant's legs off the floor while handcuffs were applied, released the Defendant's legs, which fell to the floor.

The recording reflects that two officers grabbed the Defendant under the Defendant's arms, pulled the Defendant upward, and told the Defendant to stand. The Defendant did not stand voluntarily and told the officers that the Defendant was "going to make you work for it." Three officers carried the Defendant down the hallway as the group of people watched, held up their cell phones, and yelled various statements to the officers and to the Defendant. The officers placed the Defendant on the floor and instructed the Defendant to stand and walk. The Defendant demanded to see the arrest warrant. The



officers resumed carrying the Defendant by the legs and under his arms. As the officers carried the Defendant, he yelled, "This is not resisting." One officer held the Defendant's sweatshirt around the shoulder area. The officers, again, lowered the Defendant to the floor, repositioned how they carried the Defendant, and resumed carrying the Defendant. The officer who initially held onto the Defendant's sweatshirt at the shoulder area, held onto the sweatshirt at the neck area, which pulled the sweatshirt taut around the Defendant's neck. The Defendant was placed on the floor again just outside the court services office, the officers repositioned the manner in which they carried the Defendant, and the officers carried the Defendant inside the office. The crowd of people, who yelled at the officers during a large portion of the nearly three-minute recording, told the Defendant to "say something." The Defendant replied, "I'm good," as the officers carried him inside the office.

Mr. Givens testified that at the end of the recording, it looked as though the Defendant lost consciousness when the Defendant lay on the ground and "kind of when they were carrying him down the hall." Mr. Givens said that the officers were "pulling up on the neck of his hoodie" and that the Defendant's "face was flushed and his eyes were kind of bulging out." Mr. Givens said that although he did not know if the Defendant lost consciousness, Mr. Givens was concerned that the Defendant could not breathe. Mr. Givens said that after the Defendant and the officers were inside the court services office, he could not see what occurred. Mr. Givens said that he did not see the Defendant assault Officer Chaperon and that the "most resistance" the Defendant gave the officers was when the Defendant did not comply with the officers' commands to stand and walk. Mr. Givens said that he did not see the Defendant physically resist or struggle with the officers.

Mr. Givens identified three still photographs obtained from his video recording of the incident. The photographs, which were received as an exhibit, reflect the Defendant's lying on the floor while three officers restrain the Defendant, the officers' carrying the Defendant toward the court services office door, and the officers' carrying the Defendant through the building. The photographs reflect that an officer held the Defendant's sweatshirt.

On cross-examination, Mr. Givens testified that in his recording, the Defendant stated, "I'm good." Mr. Givens could not identify another voice heard in the recording and said he did not record any of the events that occurred after the Defendant and the officers entered the court services office.

The Defendant testified that he was involved in the local community, assisting people with basic needs, and in local politics. The Defendant said that he had unsuccessfully sought public office and had participated in political demonstrations related to unions, "neighbor rights," and police-related shootings. The Defendant said that any demonstration in which he had participated or organized had been peaceful without violence and property damage. When asked to describe the Defendant's relationship with

local law enforcement agencies, he said the Defendant criticized tactics involving police harassment and corruption. The Defendant said that he advocated for less law enforcement and more social services to help people in the community and that, as a result, law enforcement did not “hold [the Defendant] in high regard.”

The Defendant testified that a man was “killed in police custody” a couple of days before the incident in this case and that the Defendant and other community members helped the family of the man “advocate for justice,” which included the Defendant and others attending the public meeting hosted by the City of Knoxville to discuss the nature of “policing” and the selection of a new Knoxville Police Chief. The Defendant said that the meeting was underway when he arrived, that he left the meeting room to find “Officer Gee,” whom the Defendant knew from his community work, and that before the Defendant could speak with Officer Gee, Officer Chaperon “grab my wrist and twist it behind my back and say You’re under arrest.” The Defendant said that he asked why he was under arrest; that, initially, the officers did not identify the criminal charge; and that, later, he was informed of the charge. The Defendant said that he determined the arrest was “for an unjust case” and that he decided to engage in non-violent civil disobedience of not doing anything but “go down” and tell the officers that the officers were “going to have to take [him],” if he were “going to be arrested for unjust means.” The Defendant said that this tactic was used during the civil rights movement and was “universally recognized as not resisting.”

The Defendant testified that he did not use force against the officers and did not jerk away or run from the officers. The Defendant said, “I just simply just let my body fall to the ground.” The Defendant said that the officers knew him and that they used the arrest as an “opportunity to embarrass” a person who was “loudly critical of them over the years.” The Defendant said that the outstanding warrant was related to a protest following a police shooting of a teenager inside a high school bathroom and that the Defendant was the only person with an arrest warrant related to this event, although “thousands of other people” protested. The Defendant said that he had been “singled out” by the police and that he was scared on the day of the arrest but refused to “cower[.]”

The Defendant testified that he called out for help because he only saw law enforcement officers at the time of the arrest and that the Defendant wanted witnesses to the incident. The Defendant said that he did not encourage any violence or for any of the meeting attendees to intervene during the incident. The Defendant said that nobody attacked the officers or attempted to take their guns and that the attendees who filmed the incident ensured the Defendant’s safety and a record of the incident existed. The Defendant said that the officers carried him by his sweatshirt, which restricted his airflow. The Defendant said that Officer Chaperon held onto the Defendant’s sweatshirt hood and that the officers should have only held the Defendant under the arms. The Defendant acknowledged that he was not quiet while being carried and said that he stood by the statement that the officers were “going to have to work for this today.” The Defendant

explained that he did not pull away from the officers but said that they were going to have to carry him if they were going to “serve a secret warrant.”

The Defendant testified that his ability to breathe was impaired by the time the officers carried him to “the other end of the hallway” and that it was apparent from the video recording he became “loopy.” The Defendant said that he asked the officers to lay him on the ground for him to walk voluntarily but that the officers ignored the request. The Defendant said he told the officers that he could not breathe and wanted to walk. The Defendant said, “I had just . . . passed out and then woke up on the floor.” Referring to an unspecified video recording, the Defendant stated that he was “passed out on the floor” and unconscious and that after he “came to,” people were asking questions. The Defendant said that he told everyone, “I’m good,” and then “passed out.”

The Defendant testified that inside the court services office, the officers helped the Defendant stand and instructed him to sit on a chair, which he did voluntarily. The Defendant said that he was handcuffed behind the back, that he could not do anything but sit on the chair, and that he wanted to be comfortable. The Defendant said that he placed his feet on the desk in order to be comfortable while sitting and being handcuffed. The Defendant denied kicking any office equipment off the desk. The Defendant said that while he sat on the chair with his legs on the desk, Officer Chaperon lay on top of the Defendant and “grind[ed]” the Defendant’s head against the wall. The Defendant denied attempting to stand, run, or hit the officers. The Defendant said that Officer Chaperon constantly rubbed his forearm on the Defendant’s face and neck and that the Defendant attempted to sit straight to prevent being smothered. The Defendant said that although he was scared, he was “talking smack” because of the officers’ treatment. The Defendant said that at some point, he coughed because Officer Chaperon continued to hit and press him against the wall with the forearm, that pressure was applied to his throat, and that after the cough, Officer Chaperon accused him of spitting on Officer Chaperon. The Defendant denied intentionally spitting on Officer Chaperon.

The Defendant testified that after he was accused of spitting on Officer Chaperon, Officer Chaperon punched him three times on the face with a closed fist, which he said caused his head to hit the wall. The Defendant said that after Officer Chaperon stopped hitting him, he asked the other officers how they could allow this to occur and that the other officers said the Defendant “deserved it.” The Defendant said that a spit mask was placed on his head, that an elastic band in the mask was placed in his mouth, and that he gagged. The Defendant said that he walked voluntarily out of the court services office, that his neck and face were pushed against the wall while the handcuffs were exchanged, and that he did not resist or jerk away from the officers.

The Defendant testified that correction officers photographed him during the booking process at the jail. The Defendant identified three photographs, which were received as an exhibit and which reflected what the Defendant described as bruising on the

sides of his face and forehead. The Defendant said that upon release from the jail hours later, he was interviewed by a newspaper reporter outside the jail and that the reporter took a photograph of the left side of his face. Referring to the photograph, which was received as an exhibit, the Defendant said it showed a bruise on his cheek. The photograph reflects that it was taken at night. The Defendant said that Officer Chaperon's "assault and brutality" caused the bruises.

On cross-examination, the Defendant testified that the Defendant had seen Officer Chaperon in the building previously and that although Officer Chaperon had not been physical, Officer Chaperon had made "snarky exchanges and looks." The Defendant said that he did not jerk away when Officer Chaperon placed Officer Chaperon's arm on him. The Defendant said that he "just fell down" when the officers "forcibly grab me and twist my arm behind my back" and denied that the decision to lay on the ground was "to pull away" from the officers. The Defendant said that the officers "pounced" on him while he lay on the floor. The Defendant acknowledged that the decision to fall onto the floor was intended to be an act of civil disobedience to "make a statement" that the officers' conduct was "unjust and unreasonable." The Defendant acknowledged that the officers asked him to walk and that the officers struggled to carry him to the court services office.

The Defendant testified that he coughed due to Officer Chaperon's hitting him and that he did not spit on Officer Chaperon. The Defendant did not believe Officer Chaperon thought the Defendant spat on Officer Chaperon. The Defendant thought Officer Chaperon used the cough as an excuse to strike him. The Defendant said that when he coughed, Officer Chaperon was striking his neck. The Defendant recalled that Officer Chaperon punched him on the left cheek but was uncertain if he was punched on the right side of the face. Referring to the photograph taken outside the jail showing the left side of the Defendant's face, the Defendant said that Officer Chaperon punched him at least twice. On redirect examination, the Defendant stated that the photograph taken after his release from the jail was taken some time after midnight, which was hours after the incident.

Upon this evidence, the jury found the Defendant guilty of resisting arrest. The jury was unable to reach a verdict for the assault allegation, and the trial court dismissed the charge. The trial court imposed a sentence of ninety days' probation for resisting arrest. This appeal followed.

The Defendant contends that the evidence is insufficient to support his resisting arrest conviction. He asserts that the evidence failed to establish he used force to resist arrest. The State responds that the Defendant's conduct was not passive resistance and that his decision to "fall from the police's grasp and resist their handcuffing him" established sufficient evidence of force.

In determining the sufficiency of the evidence, the standard of review is “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *see State v. Vasques*, 221 S.W.3d 514, 521 (Tenn. 2007). The State is “afforded the strongest legitimate view of the evidence and all reasonable inferences” from that evidence. *Vasques*, 221 S.W.3d at 521. The appellate courts do not “reweigh or reevaluate the evidence,” and questions regarding “the credibility of witnesses [and] the weight and value to be given the evidence . . . are resolved by the trier of fact.” *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997); *see State v. Sheffield*, 676 S.W.2d 542, 547 (Tenn. 1984).

“A crime may be established by direct evidence, circumstantial evidence, or a combination of the two.” *State v. Hall*, 976 S.W.2d 121, 140 (Tenn. 1998); *see State v. Sutton*, 166 S.W.3d 686, 691 (Tenn. 2005). “The standard of review ‘is the same whether the conviction is based upon direct or circumstantial evidence.’” *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)). A conviction may be based upon circumstantial evidence alone. *See Dorantes*, 331 S.W.3d at 380-381.

As relevant to this appeal, Tennessee Code Annotated section 39-16-602(a) states that “[it] is an offense for a person to intentionally prevent or obstruct anyone known to the person to be a law enforcement officer . . . from effecting a[n] . . . arrest . . . by using force against the law enforcement officer or another.” Code section 39-16-602(b) states, “Except as provided in § 39-11-611, it is no defense to prosecution under this section that the . . . arrest . . . was unlawful.” Force is defined as the “compulsion by the use of physical power or violence and shall be broadly construed[.]” *Id.* § 39-11-106(a)(12) (2018). “‘Passive resistance’ generally does not constitute using force as contemplated by the preventing or obstructing an arrest statute.” *State v. Burgess*, 532 S.W.3d 372, 393 (Tenn. Crim. App. 2017); *see State v. Corder*, 854 S.W.2d 653, 655 (Tenn. Crim. App. 1992) (concluding that a defendant’s not moving and directing obscene language at officers were not sufficient to support a conviction for resisting arrest); *see also* Tenn. Op. Att’y Gen. 00-147, 2000 WL 159391 (Sept. 26, 2000) (articulating that passive inaction, specifically sitting in a car and refusing to exit, was not resisting arrest). However, a defendant’s effort to prevent an officer from placing handcuffs on the defendant is “sufficient to support the element of force.” *State v. Sangria Venturia Baker, Jr.*, No. W2018-00732-CCA-R3-CD, 2019 WL 2404977, at \*6 (Tenn. Crim. App. June 7, 2019), *perm. app. denied* (Tenn. Sept. 20, 2019); *see State v. Gary Mitchell Hestand*, No. M2014-02208-CCA-R3-CD, 2015 WL 10684326, at \*8 (Tenn. Crim. App. Oct. 7, 2015); *State v. Jonathan Lamont Jones*, No. W2011-02311-CCA-R3-CD, 2012 WL 4057263, at \*3 (Tenn. Crim. App. Sept. 17, 2012).

In the light most favorable to the State, the evidence reflects that officers approached the Defendant to arrest him in connection with an outstanding warrant. Officer Chaperon placed his hand on the Defendant’s arm, told him about the existing arrest warrant, and told

him to place his arms behind his back. Officer Chaperon testified that the Defendant “kind of turned” and “went to the ground immediately” on the Defendant’s own volition. Former Officer Cunningham testified that the Defendant “threw himself on the floor.” The Defendant refused to comply with the officers’ commands to stand and walk before and after he was placed in handcuffs. Although, generally, falling onto the ground and refusing to stand and walk before and after an arrest is conduct consistent with passive resistance, the Defendant testified that he fell onto the floor when Officer Chaperon grabbed the Defendant’s wrist, twisted his wrist behind the Defendant, and told the Defendant that he was under arrest. Based upon this evidence, the jury could have inferred beyond a reasonable doubt that the Defendant used force to prevent his arrest when he threw himself on the floor after Officer Chaperon grabbed the Defendant’s wrist, twisted his wrist behind his back, and stated he was under arrest.

Likewise, video evidence of the officers’ placing handcuffs on the Defendant reflects additional evidence of the Defendant’s use of force. *See Corder*, 854 S.W.2d at 655. The record reflects that as the Defendant lay on the floor, three officers rolled the Defendant onto the stomach. An officer instructed the Defendant to place his arms behind his back. The Defendant yelled at the officers and did not comply with the officer’s command. One officer held onto the Defendant’s right wrist to place his arm behind his back, and the Defendant pulled his wrist from the officer’s grip with sufficient force to result in an audible sound when the Defendant’s arm struck the floor. Officers instructed the Defendant to place the Defendant’s hands behind his back, but two officers pulled both of the Defendant’s arms behind his back, while another officer bent the Defendant’s legs toward his back, in an effort to handcuff the Defendant. We conclude that based upon this evidence, a jury could have determined beyond a reasonable doubt that the Defendant intentionally used force to prevent or obstruct the officers from effectuating an arrest by (1) falling onto the floor after the officer had placed the Defendant’s arm behind his back in an effort to place handcuffs on the Defendant, (2) forcing the Defendant’s hand from the officer’s grip while he lay on the floor as the officers placed handcuffs on him, and (3) requiring the officers to pull the Defendant’s hands behind his back while the officers placed handcuffs on him.

In reaching this conclusion, we have not overlooked the Defendant’s testimony that he did not use force against the officers and did not jerk away from the officers. However, this court does not reweigh or reevaluate the evidence, and questions about witness credibility and the weight to be given the evidence were resolved by the jury. *See Bland*, 958 S.W.2d at 659; *Sheffield*, 676 S.W.2d at 547. Force is to be construed broadly, and, in the light most favorable to the State, the evidence in the present case is sufficient to support the Defendant’s conviction. The jury considered the witness testimony, along with the video evidence, and its verdict reflects that it rejected the Defendant’s testimony that he did not use force to prevent or obstruct his arrest. The Defendant is not entitled to relief on this basis.

In consideration of the foregoing and the record as a whole, we affirm the judgment of the trial court.

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ROBERT H. MONTGOMERY, JR., JUDGE