

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

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

No. E2023-01800-CCA-R3-CD

CAMILLE R. McMULLEN, P.J., dissenting.

The Defendant challenges the sufficiency of the evidence supporting his conviction of resisting arrest. See Tenn. Code Ann. § 39-16-602(a) (“It is an offense for a person to intentionally prevent or obstruct anyone known to the person to be a law enforcement officer, or anyone acting in a law enforcement officer’s presence and at the officer’s direction, from effecting a stop, frisk, halt, arrest or search of any person, including the defendant, by using force against the law enforcement officer or another.”). The gravamen of the Defendant’s challenge is not the sufficiency of the evidence offered to establish his use of “force.” Instead, the Defendant asks us to focus on when the “force” occurred or the Defendant’s pre- and post-arrest conduct. Because the State did not offer *any* evidence of the Defendant’s use of force before his arrest, the Defendant argues, and I agree, that the evidence supporting the resisting arrest conviction is insufficient as a matter of law.

Viewing the evidence in the light most favorable to the State, Officer Chaperon did not testify to *any* effort by the Defendant that prevented or obstructed Officer Chaperon from handcuffing the Defendant. Indeed, the record reflects that the State did not ask Officer Chaperon a single question concerning how the Defendant prevented or obstructed his arrest, and what Officer Chaperon told the Defendant upon arrest was elicited on cross-examination. The video showing the officers handcuff the Defendant showed the Defendant on his stomach on the ground, and three officers have control of the Defendant’s body: an officer on each side of the Defendant and an officer at the Defendant’s feet. One officer can be seen taking the Defendant’s right arm and placing it behind the Defendant’s back, and the clicking sound of handcuffs is heard. The Defendant’s arm did not tense or wriggle away from the officer. There is nothing in the video showing that the Defendant was obstructing or preventing the officers from arresting him as his body was limp and under the control of the officers. While the Defendant is yelling and refusing to comply with the officer’s command to move or walk, this court has previously reversed a resisting

arrest conviction based on the same conduct. See State v. Corder, 854 S.W.2d 653, 655 (Tenn. Crim. App. 1992) (concluding that the defendant's not moving and directing obscene language at officers were insufficient to support a conviction for resisting arrest). The Defendant is not fighting the officers, pulling his hands away, refusing to put his hands behind his back, or struggling to get away from the officers.

Respectfully, the facts as outlined by the majority (1) pertain primarily to the Defendant's post-arrest conduct; (2) do not identify when the officers arrested or exercised control of the Defendant; and (3) blur the line between the Defendant's pre- and post-arrest conduct. This is significant because, as conceded by the majority, the Defendant's pre-arrest conduct "in falling onto the ground and refusing to stand and walk" is consistent with passive resistance, which is lawful conduct. Distinguishing between the Defendant's pre-arrest conduct is also significant because the State simultaneously tried the Defendant for assault based on his post-arrest conduct in spitting at an officer which was dismissed after the jury deadlocked. Because the Defendant's arrest was complete well before the Defendant allegedly spit at the officer or kicked the computer, it stands to reason that the Defendant's subsequent actions did not prevent his arrest and cannot support his resisting arrest conviction.

Additionally, based on the Defendant's pre-arrest conduct in falling to the ground and not moving, this case is on the opposite end of the spectrum of cases in which this court has construed the element of force broadly and concluded that the force exerted by the defendant was sufficient. State v. Baker, No. W2018-00732-CCA-R3-CD, 2019 WL 2404977, at *6 (Tenn. Crim. App. June 7, 2019) (finding sufficient evidence where the defendant "refused to place his arms behind his back so that he could be handcuffed," and he "lay on one arm and stretched the other away from his body," struggling with the officers before they were able to cuff him); State v. Hestand, No. M2014-02208-CCA-R3-CD, 2015 WL 10684326, at *8 (Tenn. Crim. App. Oct. 7, 2015) (finding sufficient evidence where the defendant "resisted official commands to halt and to show his hands in order to be handcuffed," and when he continued to resist, both deputies had to subdue him "on the ground in order to handcuff him"); State v. Parvin, No. E2014-01569-CCA-R3-CD, 2015 WL 2128585, at *1, *3 (Tenn. Crim. App. May 6, 2015) (finding sufficient evidence where the defendant pulled away from the officer, balled up his fist, then "locked his hands beneath him" when the officer attempted to handcuff him); State v. Jones, No. W2011-02311-CCA-R3-CD, 2012 WL 4057263, at *3 (Tenn. Crim. App. Sept. 17, 2012) (finding sufficient evidence where the defendant pulled his hands away from the arresting officers and "continued to resist the officers when they attempted to handcuff him"); State v. Grimes, No. M2001-02385-CCA-R3-CD, 2002 WL 1885053, at *4 (Tenn. Crim. App. Aug. 16, 2002) (finding sufficient evidence where the defendant "locked his arms, thus preventing the officers from putting handcuffs on him"); State v. Tidwell, No. 01C01-9807-CC-00288, 1999 WL 436840, at *3 (Tenn. Crim. App. June 30, 1999) (finding

sufficient evidence where the defendant “flailed his arms and struggled with the officers” as they were attempting to handcuff him); State v. Isibor, No. 01C01-9610-CC-00441, 1997 WL 602945, at *3 (Tenn. Crim. App. Sept. 30, 1997) (finding sufficient evidence where the defendant “flailed his arms” in an effort to prevent being handcuffed); State v. Lee, No. 03C01-9410-CR-0039, 1995 WL 395840, at *5 (Tenn. Crim. App. July 6, 1995) (finding sufficient evidence where the defendant wrestled with the officer attempting to handcuff him); State v. Jackson, No. 02C01-9405-CC-00097, 1995 WL 81428, at *1 (Tenn. Crim. App. Mar. 1, 1995) (finding sufficient evidence where the defendant struggled with officers to avoid being handcuffed). In my view, there is no evidence that the Defendant engaged in any affirmative act to prevent or obstruct his arrest, which is required to sustain a conviction for resisting arrest.

Because the Defendant’s use of force was not prior to or contemporaneous with Officer Chaperon’s act of effecting the arrest, I would have reversed and vacated his resisting arrest conviction. Accordingly, I respectfully dissent.

s/ Camille R. McMullen

CAMILLE R. MCMULLEN, PRESIDING JUDGE