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

STATE OF DELAWARE,	)	
	)	
v.	)	Case No. 1609017709
	)	
JUSTIN RADCLIFF,	)	
	)	
Defendant	)	

Submitted: July 27, 2017
Decided: August 3, 2017

Erik Towne, Esquire
Deputy Attorney General
820 N. French Street, 7th Floor
Wilmington, DE 19801
Attorney for the State of Delaware

Elliot Margules, Esquire
Office of the Public Defender
820 N. King Street
Wilmington, DE 19801
Attorney for Defendant

MEMORANDUM OPINION AND DECISION AFTER TRIAL

By way of Information dated October 31, 2016, the Defendant, Justin Radcliff (hereinafter the "Defendant"), was charged with one count of Resisting Arrest, in violation of 11 *Del. C.* § 1257(b). A non-jury trial was convened on June 15, 2017. At the conclusion of the trial, the Defendant requested the opportunity to provide additional briefing, and the Court reserved its decision pending the post-trial briefing. This is the Court's Final Opinion and Decision After Trial.

LEGAL STANDARD

After a verbal colloquy with the Court, the Defendant elected to waive his right to a jury trial, and the case was tried as a bench trial. As such, the Court sat as the sole trier of fact. Therefore, it is the Court's responsibility to assess the credibility of the testifying witnesses and,

where there is a conflict in the testimony, to reconcile these conflicts, "if reasonably possible[,] so as to make one harmonious story."[1] In doing so, the Court takes into consideration the demeanor of the witnesses, their apparent fairness in giving their testimony, their opportunities to hear and know the facts about which they testified, and any bias or interest that they may have concerning the nature of the case.[2] Based upon the facts established at trial, the Court must then determine whether the State has met each and every element of the specified offense beyond a reasonable doubt.[3]

FACTS

During the trial convened on June 15, 2017, the Court heard testimony from Officer Blake Middendorf (hereinafter "Officer Middendorf") of the New Castle County Police Department. No other witnesses testified at the trial. The Court finds the relevant facts as follows.

On the evening of September 24 into September 25, 2016, Officer Middendorf was on routine patrol in a marked police vehicle with Officer Gregory Bruno (hereinafter "Officer Bruno") in the area of Castle Hill Drive and Roxeter Road in New Castle, Delaware. During the patrol, the officers observed a black Ford Explorer commit two distinct turn signal violations, prompting the officers to activate the emergency lights on the police vehicle and initiate a traffic stop. However, the Explorer did not immediately stop, and instead swerved from one side of the road to the other while traveling less than twenty-five miles per hour. The Explorer eventually stopped when it pulled into the driveway of a nearby residence.

---

[1] *Nat'l Grange Mut. Ins. Co. v. Nelson F. Davis, Jr.*, 2000 WL 33275030, at *4 (Del. Com. Pl. Feb. 9, 2000).
[2] *State v. Westfall*, 2008 WL 2855030, at *3 (Del. Com. Pl. Apr. 22, 2008).
[3] *See State v. Bell*, 2015 WL 1880591, at *6 (Del. Com. Pl. Apr. 23, 2015).

Immediately after the Explorer pulled into the driveway, an individual exited the Explorer from the passenger side, jumped over a fence, and ran into the nearby house. The individual was later identified as the Defendant. Officer Bruno exited the police vehicle and went up to the house, while Officer Middendorf stayed with the Explorer and the remaining occupants.[4] Officer Bruno pounded on the front door of the house and yelled for Defendant to "come out." Inside the residence, the Defendant was arguing with an unnamed female; the woman looked as though she was attempting to pull the Defendant toward the front door, while the Defendant appeared reluctant to leave.[5] Finally, the officers entered the residence and arrested the Defendant. The Defendant claimed he fled because he had two outstanding violations of probation. The Defendant was ultimately charged with one count of Resisting Arrest.

PARTIES' CONTENTIONS

The Defendant raised two primary contentions in his post-trial memorandum. First, the Defendant argues the activation of police lights does not indicate to a reasonable person an intention to stop every occupant of a vehicle – particularly when the offense justifying the stop was a mere traffic violation. Specifically, the Defendant suggests a reasonable person in the Defendant's position would not have believed himself or herself to be under arrest, and there was no manifestation of the officers' intent to detain all occupants of the vehicle. Second, the Defendant argues Officer Bruno's statement of "come out" is inadmissible hearsay and, irrespective of whether it is admissible, it does not constitute the requisite objective

[4] Officer Middendorf testified his "main focus" was on Officer Bruno, as he was concerned for Officer Bruno's safety.

[5] Officer Middendorf testified he made these observations directly after he personally approached the house.

manifestation of an intent to arrest the Defendant. Relatedly, the Defendant's reported "reluctance" to exit the house does not constitute refusal or resistance.

The State argues passengers in vehicles are subject to police scrutiny during routine traffic stops and would not believe themselves to be free to leave; accordingly, activating emergency lights to detain a vehicle functions to alert all occupants of the vehicle they are being detained. Second, the State argues the statement "come out" is admissible non-hearsay, as it is a command and is not offered for the truth of the matter asserted; in the alternative, the State argues the statement was offered to show the effect of the statement on the Defendant. Coupled with the statement is the Defendant's failure to comply with significant and unambiguous commands from a police officer to exit the house, which the State argues is sufficient to prove the elements of resisting arrest beyond a reasonable doubt.

DISCUSSION

Under 11 *Del. C.* § 1257(b), the State must prove the Defendant intentionally prevented or attempted to prevent a police officer from effecting an arrest or detention of the Defendant or intentionally fled from a police officer who was effecting an arrest of the Defendant. Case law has expanded the State's burden to prove the arresting officer "had a manifest purpose of taking the person into custody and the defendant resisted[.]"[6] The arresting officer must communicate an intention to arrest that is "sufficiently clear" as to allow the arrestee to "understand that the officers were trying to stop" the individual.[7] A defendant's resistance must be intentional, which

---

[6] *State v. Watkins*, 2016 WL 8999312, at *4 (Del. Com. Pl. Feb. 2, 2016).
[7] *U.S. v. Anderson*, 2011 WL 4442733, at *11 (D. Del. Sep. 23, 2011).

Delaware law defines as "the person's conscious object to engage in conduct of that nature or to cause that result[.]"[8]

While this matter involves a single count of Resisting Arrest, the parties agree there are two distinct points which could theoretically give rise to a conviction for Resisting Arrest. The first point is when the Defendant allegedly exited the Explorer and ran into the house, while the second point is when Officer Bruno was at the door of the house. Therefore, the Court will treat these occurrences as separate events, and will consider the relevant legal arguments in conjunction with the appropriate event.

I. The Initial Stop of the Vehicle

It is undisputed a driver resists arrest by continuing to operate a motor vehicle after a trailing police vehicle activates its emergency lights, or when the occupant of a vehicle refuses to exit after being ordered to do so by a uniformed police officer.[9] The activation of emergency lights is a near-universal signal to operators of motor vehicles, and it is unquestionable such an event would be unambiguous in communicating the police officer's intent to detain the driver. However, the parties dispute whether such an event would communicate the same fact to a passenger in the vehicle.

Both the United States and Delaware Supreme Courts have found passengers are deemed to be detained when the driver of the vehicle is subjected to a traffic stop.[10] However, the majority of the existing case law regarding the detention of passengers is focused on the Fourth Amendment.[11] This distinction is critical, as rules crafted for the sake of protecting the constitutional rights of passengers present different considerations than a rule subjecting a

---

[8] 11 *Del. C.* § 231.
[9] *See State v. Tankard*, 2014 WL 10187038, at *2 (Del. Com. Pl. Nov. 10, 2014).
[10] *See Cropper v. State*, 123 A.3d 940, 944 (Del. 2015); *Brendlin v. California*, 551 U.S. 249, 258 (2007).
[11] *See Brendlin*, 551 U.S. at 255.

defendant to criminal liability; therefore, the fact of prior case law terming a passenger seized or detained is not binding on the instant matter.

The Defendant cited to *Massachusetts v. Quintos Q.*[12] in his post-trial brief. In *Quintos*, a police officer activated his emergency lights in an attempt to pull over a vehicle in which the defendant was a passenger.[13] The driver of the vehicle led the police on a chase lasting several minutes, at the conclusion of which both the driver and the passenger exited the vehicle and began running. A second officer chased the driver and the defendant on foot, yelling "stop, police." The defendant was eventually cornered, arrested, and charged with resisting arrest.[14] The defendant's conviction for resisting arrest was overturned, as the defendant – who was merely the passenger – would not have suspected himself to be under arrest.[15] The Massachusetts resisting arrest statute requires an intention to arrest and an understanding of such intention by the person to be detained.[16] However, as the State correctly notes, the Massachusetts statute is limited to arrests, and does not include resisting a detention.[17]

In *S.G.K. v. Florida*,[18] the defendant was standing next to a vehicle that had been involved in a traffic accident; as a marked police vehicle approached the scene, the defendant fled into the nearby woods.[19] The police officer did not say anything to the defendant during the chase, and eventually brought the defendant back to the scene, handcuffed him, and placed him

[12] 928 N.E.2d 320 (Mass. 2010).
[13] *Id.* at 322.
[14] *Id.*
[15] *Id.* 323-24 ("Even assuming that the circumstances of the police pursuit in this case communicated an intent to arrest, we conclude that a reasonable passenger, innocent of any crime, would assume that it was the driver that the police intended to arrest.").
[16] *Id.* at 323.
[17] *See Massachusetts v. Grant*, 880 N.E.2d 820, 824 (Mass. 2008) ("Fleeing from, or even resisting, a stop or patfrisk does not constitute the crime of resisting arrest.")
[18] 657 So. 2d 1246 (Fla. Dist. Ct. App. 1995).
[19] *Id.* at 1247.

under arrest.[20] The defendant, who admitted he fled because he was truant, was adjudicated delinquent on the charge of resisting arrest.[21] In Florida, a defendant is not guilty of resisting arrest when, *inter alia*, the defendant had no reason to believe he or she was being detained.[22] The Florida District Court of Appeal reversed the adjudication of delinquency, as the officer never made any commands to the defendant and the defendant "had no reason to believe he had done something illegal for which he would be arrested."[23] Furthermore, "a defendant's mere presence at the scene of a *crime* and flight therefrom is insufficient evidence to support an adjudication of delinquency [for resisting arrest]."[24]

In *Tawdul v. Indiana*,[25] the defendant was a passenger in a vehicle pulled over by the police for a traffic violation.[26] After the vehicle stopped, both the driver and the passenger exited the vehicle; both refused to return to the vehicle after being ordered to do so by the police officer.[27] After some conversation, the passenger went into a nearby residence and returned moments later; the passenger was charged with and convicted of resisting arrest. The Indiana Court of Appeals held "the police have a limited right to briefly detain a passenger who exits the vehicle after it has been lawfully stopped."[28] Even though the passenger played no part in the underlying offense, the passenger was not entitled "to simply exit the vehicle and walk away.

---

[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.* at 1248.
[24] *Id.*
[25] 720 N.E.2d 1211 (Ind. Ct. App. 1999).
[26] *Id.* at 1213.
[27] *Id.*
[28] *Id.* at 1216-17. Further, the "brief detention does not necessarily encompass detaining the individual for the entire length of the traffic stop. The police may detain the passenger in order to ascertain the situation and to alleviate any concerns the officer has for his or her safety. If probable cause or reasonable suspicion develop during this short period of time, then the officer may be justified in detaining the individual longer in order to further investigate." *Id.* at 1217.

Although under no suspicion of culpability, the passenger is still subject to the limited authority of the officer."[29]

While none of the aforementioned cases are precisely on point, they are instructive. Concerning *Quintos*, the difference in the requisite elements prevents direct comparison. However, the Massachusetts Court made the following observation: "[e]ven assuming that the circumstances of the police pursuit in this case communicated an intent to arrest, we conclude that a reasonable passenger, innocent of any crime, would assume that it was the driver that the police intended to arrest."[30] Whether the police action was an arrest or detention does not change the expectation of the passenger believing the police activity to be limited to the driver.

In *S.G.K.*, the Florida court found there was no indication the defendant should have known he was subject to police authority. Furthermore, the Court emphasized mere presence at the scene of a crime, and then fleeing the scene, does not constitute an offense. In the case at bar, the Defendant was initially nothing more than a bystander to the traffic offenses committed by the driver of the vehicle. Without some manifestation of an intent to detain the Defendant, he would be free to, at best, exit the vehicle – the precise scene of the offense.

Tawdul is instructive on the issue of whether a passenger is free to leave the scene of a traffic offense. In *Tawdul*, the crime was not committed upon the defendant's exit from the vehicle, but rather upon the defendant's refusal to comply with an officer's instructions to reenter the vehicle. Under the logic of *Tawdul*, a defendant who exits a vehicle and immediately enters a nearby residence could be compelled to then exit the residence and return to the vehicle, but would not be subject to criminal liability until and unless given such an order.

---

[29] *Id.*
[30] *Quintos*, *supra*, at 324.

In the matter *sub judice*, the Court finds the mere fact of a vehicle being pulled over for a traffic offense does not place all of the occupants on notice they are being detained, for the purposes of establishing resisting arrest, absent some other circumstance communicating an intent to detain all occupants of the vehicle. There must be an objective communication *to the non-driving occupants* of the officer's intent to arrest or detain. Here, the Defendant exited the vehicle and entered the residence before either officer could command the Defendant to stop. Therefore, without a reasonable manifestation of the officers' intent to detain the Defendant, whether specifically or generally, the Defendant cannot be found guilty of resisting arrest for his actions at that point in time.

As a corollary matter, the Defendant raised an issue as to the proper charge. According to the Defendant, and utilizing the State's contention the Defendant was detained once the officers activated the police vehicle's emergency lights, the correct charge would have been Escape.[31] Specifically, the Defendant suggests "[o]nce a Defendant is detained, fleeing from said detainment does not constitute [resisting arrest]."[32] This argument is unavailing, and appears to conflate the issues of *detention* and *seizure* – terms that are admittedly used interchangeably – while also ignoring the language of resisting an officer who is *effecting* an arrest. A person is *seized* when subjected to a traffic stop, even if the person is merely a passenger in the vehicle.[33] A *detention* occurs when "a reasonable person would not believe that he [or she] was free to leave."[34] The traffic stop also *detains* the occupants for the purposes of investigation and/or issuing a citation; again, passengers are detained the same as drivers. The

---

[31] Pursuant to 11 *Del. C.* § 1251, "A person is guilty of escape in the third degree when the person escapes from custody[.]" As defined by 11 *Del. C.* § 1258(2), custody "means restraint by a public servant pursuant to an arrest, detention or an order of a court."
[32] Defendant's Opening Brief, at p. 7.
[33] *See State v. Coursey*, 136 A.3d 316, 322 (Del. Super. 2016).
[34] *State v. Rollins*, 922 A.2d 379, 383 (Del. 2009).

difference between these concepts is largely one of semantics. Arguably, the separation – in the context of a traffic stop – is when the police have actually secured the vehicle and its occupants.

The operative distinction between Escape and Resisting Arrest is whether the police have already effected the arrest or detention or are in the process of effecting the arrest or the detention. While it is true the Defendant was seized for purposes of the Fourth Amendment, the officers were *effecting* the detention by directing the vehicle to pull over.[35] The officers did not have control over the vehicle or its passengers, as the officers had not even stepped out of the police vehicle, let alone made any sort of direct contact, before the Defendant fled into the residence. It is undisputed the officers were still in the process of detaining the vehicle and its occupants; therefore, the detention had not been completed at the time of the Defendant's flight.

Under the Defendant's logic, no person could ever be found guilty of resisting arrest, as a police officer's manifestation of his or her intent to detain a person would result in the person believing he or she was not free to leave. Consequently, such a person would be detained, and no longer capable of resisting such a detention. The Court declines to follow this logic, as statutory construction does not require a Court to follow an interpretation leading to absurd results.

II. The Defendant's Failure to Exit the House

Next, the Defendant argues he cannot be found guilty of resisting arrest for his failure to exit the residence. Preliminarily, the Defendant argues Officer Middendorf's testimony as to the statement made by Officer Bruno is impermissible hearsay. Under Delaware Uniform Rule of Evidence 801, hearsay "is a statement, other than one made by the declarant while testifying at

[35] Pursuant to 11 *Del. C.* § 1257(b), an individual is not permitted to prevent a police officer "from effecting an arrest or detention of the person or another person or [flee] from a peace officer who is effecting an arrest or detention of the person."

the trial or hearing, offered in evidence to prove the truth of the matter asserted." A statement includes an oral assertion by a person. Delaware courts have held "instructions to an individual to do something are not hearsay."[36]

Here, Officer Middendorf testified his attention was primarily focused on Officer Bruno and Officer Bruno ordered the Defendant to come out of the residence. While Officer Middendorf did not specifically state he heard the words come from Officer Bruno's mouth, the Court has heard no evidence suggesting it would be improbable for Officer Middendorf to be able to hear the words personally. There was no evidence suggesting the distance between the two officers was particularly great, nor was there evidence of loud noises, obstructions, or anything else that might limit Officer Middendorf's ability to perceive Officer Bruno's statements. Indeed, because Officer Middendorf testified his focus was primarily upon Officer Bruno, the Court is satisfied Officer Middendorf had personal knowledge of Officer Bruno's statement.

Because Officer Middendorf had personal knowledge, he would be entitled to testify to the fact of Officer Bruno making a statement. The remaining question is whether the statement itself is impermissible hearsay, to which the Court concludes it is not. First, the statement "come out" is a command, rather than an assertion. Second, there is no truth-value to the statement, which means it logically cannot be offered for the truth of an assertion communicated by the statement. Non-assertive, truth-neutral statements do not fall within the hearsay definition. Accordingly, the Defendant's objection to the admission of Officer Bruno's statement is overruled.

Turning to the second event, the Court must consider whether there was an objective manifestation of the officer's intent to arrest or detain the Defendant and whether the Defendant

---

[36] *Estate of Rochester v. Reyes, M.D.*, 2015 WL 7823132, at *3 (Del. Super. Dec. 3, 2015).

intentionally acted to prevent the arrest or detention. Although the Court has distinguished between the Defendant's flight from the vehicle and the Defendant's continued presence within the residence, the latter must be analyzed in conjunction with the Defendant's actions in the former. Therefore, the evidence introduced at trial presents the following relevant facts: (1) the Defendant was a passenger in a vehicle subjected to a traffic stop by a marked police vehicle with its emergency lights activated; (2) the Defendant immediately fled from the vehicle, jumped over a fence, and ran into a nearby residence; (3) a uniformed police officer banged on the door of the residence and yelled "come out;" (4) the Defendant did not immediately exit the residence; and (5) the Defendant appeared hesitant and resisted efforts by the female occupant to move the Defendant toward the door with the police officer.

Preliminarily, the Defendant cannot be found guilty for resisting the efforts of the female occupant to move the Defendant toward the police. The female occupant was not herself a police officer and was not acting under the direction of a police officer. However, the Defendant's resistance is evidence of the Defendant's state of mind and general reluctance to approach the officers. Likewise, the Defendant's eventual admission of having fled because of his outstanding violations of probation does not constitute *per se* evidence of Resisting Arrest.

The Court is permitted to consider both the evidence and all rational inferences drawn from the evidence.[37] The Court finds the Defendant immediately fled from the police when he exited the vehicle and entered the residence, and the Defendant remained within the residence even when he knew the police were ordering him to exit the residence. The elements of Resisting Arrest were satisfied upon the Defendant's refusal to surrender himself to the police once Officer Bruno knocked on the door and ordered the Defendant to come out. Prior to that point, the officers had not reasonably manifested an intent to arrest or detain the Defendant.

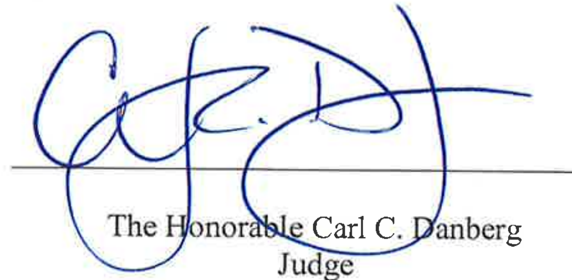
---

[37] *See Booker v. State*, 2017 WL 3014360, at *3 (Del. Jul. 14, 2017).

If the Defendant had immediately gone to the door and surrendered himself, then it would appear more likely he had never intended to resist the detention. Instead, the Defendant remained inside of the residence, expressed both reluctance and physical resistance to surrendering himself, and remained within the residence until the officers entered and physically secured the Defendant. The Court cannot rationally interpret the Defendant's actions as anything other than his knowing and intentional resistance.[38] The Resisting Arrest statute prohibits preventing an officer from effecting an arrest or detention, and the Court finds the Defendant did so prevent the officers from arresting or detaining the Defendant by willfully remaining within the residence, despite being ordered to come out. Therefore, the State has met each element of Resisting Arrest beyond a reasonable doubt.

CONCLUSION

For the foregoing reasons, the Court finds the Defendant **GUILTY** of Resisting Arrest. The matter will be scheduled for sentencing before this judicial officer.



The Honorable Carl C. Danberg
Judge

cc: Diane Healy, Judicial Case Management Supervisor

[38] The Defendant argues the Resisting Arrest statute does not require a defendant to participate in his or her own arrest. This argument is unavailing, as any individual subject to an arrest or detention may reasonably be compelled to participate by way of kneeling, placing hands in a given position, exiting a vehicle, walking to a given location, or other such actions.