

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LOUIS PAUL HALLMAN,

Defendant-Appellant.

UNPUBLISHED
February 19, 2002

No. 227153
Macomb Circuit Court
LC No. 98-002142-FH

Before: Whitbeck, C.J., and Markey and K. F. Kelly, JJ.

PER CURIAM.

Defendant Louis Hallman appeals by right his jury trial conviction of attempting¹ to resist arrest.² We affirm.

I. Basic Facts

The facts in this matter are sharply disputed. When Leon Berdy, a detective with the Eastpointe Police Department, obtained a warrant for Hallman's arrest on June 25, 1998, he learned from Hallman's father-in-law that Hallman had guns in the house and might try to resist arrest. As a result, Detective Berdy asked Eastpointe police officer Darrell Corsi to accompany him to Hallman's home to make the arrest and told him that Hallman might have weapons and might resist arrest.

When Detective Berdy and Officer Corsi went to arrest Hallman, they drove in an unmarked car and wore plain clothing. Officer Corsi reportedly had a clip-on badge attached to his belt, his gun holster was visible, and he had his police identification and other badge in his wallet. The two officers knocked on Hallman's door, but heard nothing for a period of thirty seconds to two minutes. Officer Corsi then heard a male voice inside the house yell "'what the f--k do you want' or 'who the f--k is it?'" Hallman then opened the door approximately eighteen inches. Both Detective Berdy and Officer Corsi later recalled that Detective Berdy identified himself and Officer Corsi as police officers, informed Hallman that they had a warrant for his

¹ MCL 750.92(3).

² MCL 750.479.

arrest, and asked him to step outside. Detective Berdy reportedly showed Hallman his police identification badge.

In response to their request, Detective Berdy and Officer Corsi said, Hallman replied “f--k you” and attempted to close the door. Detective Berdy pulled out his gun, told Hallman he was under arrest, and stuck his foot in the door, preventing Hallman from closing it. The two officers then pushed open the door, forcing Hallman backward. Hallman allegedly struggled with Detective Berdy, and they eventually fell to the ground. Officer Corsi helped Detective Berdy handcuff Hallman.

Reflecting on what had transpired, Officer Corsi stated that Hallman used physical force first and that Detective Berdy struck Hallman once or twice on the upper body. Detective Berdy and Officer Corsi both recalled asking Hallman where he kept his weapons and that he stated that he kept them in the back bedroom. They found no weapons there, but suspected they were in another room that had a padlock on the door, for which Hallman refused to give them the key. Officer Corsi kicked in the door and then discovered and removed two shotguns from the room. The officers called for a police car to take Hallman to the police station. Ricky Hill, the Eastpointe police officer who took Hallman to the station, testified that he did not appear to be injured and had no trouble walking.

Hallman’s testimony was almost completely contradictory. He claimed that he has severe head, neck, and back injuries from a 1996 car accident. According to Hallman, on June 25, 1998, he heard someone knocking on the door, so he and his dog went to answer it. When he opened the door, he saw two plainly dressed men he thought were salesmen. They yelled, “Are you Mr. Hallman?” to which he responded, “who the f--k are you to – gives you the right to damage my storm door.” The men ordered him out of the house, but he refused. The men responded by pulling out their guns. Aware of recent news stories about police imposters in Eastpointe, he told the men that he was going to close the door to put his dog away and call 911 to verify their identity.

Hallman then attempted to close the door, but the two men forced it open, entered his home, and proceeded to beat him severely, despite his pleas that he was disabled. He added that he was beaten so bad that he urinated in his pants, and that because his dog was barking, one of the officers kicked the dog very hard. Hallman then told the two men where the keys to the padlock were, but they kicked open the door and later had him taken to the police station.

Sheryl Henke, one of Hallman’s neighbors, saw Hallman on the morning of June 25, 1998, before his arrest, and observed that he was not injured in any way. However, after he was released from jail the next day, she saw that he was limping, and his face was swollen and bruised. She also noticed that there was significant damage to Hallman’s home following the incident. Hallman’s wife confirmed Henke’s observation that Hallman was bruised when he was released from jail.

The prosecutor originally charged Hallman with resisting and obstructing arrest.³ The jury, however, found him guilty of the lesser attempt offense.⁴

II. The Motion For Directed Verdict

A. Standard Of Review

Hallman argues that the trial court erred in denying his motion for a directed verdict because the evidence was insufficient for a conviction because he believed that the arresting officers were police imposters and were not arresting him. We review de novo the trial court's decision to deny the motion for a directed verdict.⁵

B. Legal Standards

We must examine the evidence produced before the motion for the directed verdict in the light most favorable to the prosecution, upholding the jury's verdict if a rational factfinder could find the prosecutor proved the essential elements of the offense beyond a reasonable doubt.⁶ "Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime."⁷ "However, it is not permissible for a trial court to determine the credibility of witnesses in deciding a motion for directed verdict of acquittal, no matter how inconsistent or vague that testimony might be."⁸

The elements of the crime of resisting arrest are: (1) the defendant must have resisted arrest; (2) the arrest must be lawful; (3) the person making the arrest must have been at the time an officer of the law; (4) at the time of the arrest, the defendant must have intended to have resisted such officer; (5) at the time of the arrest, the defendant must have known that the person he was resisting was an officer; and (6) at the time of the arrest, the defendant must have known that the officer was making an arrest.^[9]

Additionally, because the jury convicted Hallman of attempting to commit this crime, the prosecutor had to prove the two elements of attempt: (1) an intent to commit the crime, and (2) an act, beyond mere preparation, in "furtherance of that intent."¹⁰ Out of these many different

³ MCL 750.479.

⁴ MCL 750.92(3).

⁵ *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999).

⁶ See *People v Warren (After Remand)*, 200 Mich App 586, 588; 504 NW2d 907 (1993); *People v Daniels*, 192 Mich App 658, 665; 482 NW2d 176 (1992).

⁷ *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

⁸ *People v Mehall*, 454 Mich 1, 6; 557 NW2d 110 (1997).

⁹ *People v Julkowski*, 124 Mich App 379, 383; 335 NW2d 47 (1983).

¹⁰ *People v Frost*, 148 Mich App 773, 776; 384 NW2d 790 (1985).

elements, Hallman only claims that the prosecutor failed to prove the fifth and sixth elements of the underlying resisting arrest crime.

C. Identification As Police Officers

In *People v Royal*,¹¹ this Court held that a defendant must know that the officers were, in fact, law enforcement agents authorized to arrest the defendant before he can be found guilty of resisting arrest. *Royal*, however, is distinguishable from the present case. In *Royal*, the police officer whom the defendant assaulted never identified himself as a police officer and the defendant had no other way to determine that they were officers.¹² In contrast, the officers in this case testified that, though they were in plain clothes, they were wearing badges, they identified themselves to Hallman, and they informed him that they had a warrant. These proofs directly suggested that Hallman knew that the two individuals standing at his door were actually police officers and that they were attempting to arrest him.¹³ While Hallman gave conflicting testimony at trial, when we view the evidence in the light most favorable to the prosecutor, the evidence was sufficient for the jury to be able to find these elements of the crime beyond a reasonable doubt.

III. Jury Instructions

A. Standard Of Review

Hallman contends that the trial court erred in not instructing the jury on self-defense, depriving defendant of his right to a properly instructed jury. The trial court has the discretion to determine whether the evidence supports issuing an instruction to the jury regarding a specific theory, meriting review for an abuse of that discretion.¹⁴

B. The Trial Court's Instruction

“The instruction to the jury must include all elements of the crime charged, and must not exclude from jury consideration material issues, defenses or theories if there is evidence to support them.”¹⁵ Hallman argued to the trial court that the evidence supported his theory that he was lawfully acting in self-defense when he struggled with the officers and, therefore, the trial court should instruct the jury with regard to self-defense. The trial court, however, concluded that the resisting arrest instruction itself would inform the jury that it could find Hallman not guilty if the jury determined he did *not* know he was resisting officers who were lawfully attempting to arrest him. The trial court, nevertheless, instructed the jury that Hallman had a right to resist any excessive force that the officers used against him,¹⁶ even if the jury found that

¹¹ *People v Royal*, 62 Mich App 756, 760-761; 233 NW2d 860 (1975).

¹² *Id.*

¹³ *Julkowski, supra.*

¹⁴ See *People v Ho*, 231 Mich App 178, 188-189; 585 NW2d 357 (1998).

¹⁵ *People v Reed*, 393 Mich 342, 349-350, 224 NW2d 867 (1975).

¹⁶ See *People v Baker*, 127 Mich App 297, 299; 338 NW2d 291 (1983).

Hallman knew that they were officers attempting to arrest him. We agree with the prosecutor that these instructions, even if not perfect,¹⁷ were adequate.

Affirmed.

/s/ William C. Whitbeck

/s/ Jane E. Markey

/s/ Kirsten Frank Kelly

¹⁷ See *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000).