

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEA D. COLEMAN,)
) No. 214, 2001
 Defendant Below,)
 Appellant,) Court Below: Family Court
 v.) of the State of Delaware in
) and for Sussex County
)
 STATE OF DELAWARE,) Case No. 00279619
) File No. 0008009500
 Plaintiff Below,)
 Appellee)

Submitted: February 7, 2002
Decided: March 18, 2002

Before **VEASEY**, Chief Justice, **WALSH** and **STEELE**, Justices.

ORDER

This 18th day of March 2002, upon consideration of the briefs of the parties it appears to the Court that:

(1) In August 2000, the Delaware State Police arrested Appellant, Defendant-below, Dea D. Coleman on charges of Riot, Hindering Prosecution, and Resisting Arrest. Before trial, the State informed the Family Court that it would not pursue the charge of Riot and would instead move to amend the information to allege a charge of Disorderly Conduct. The Family Court dismissed this charge at trial when the State failed to amend the information as stated. In April 2001, the Family Court returned a verdict on the remaining two charges. The Court

determined that Coleman was not guilty on the charge of Hindering Prosecution, but found her delinquent on the charge of Resisting Arrest.

(2) The charges arose from an incident surrounding the questioning of a separate suspect on drug charges. As several officers attempted to detain the suspect, a crowd including Coleman gathered at the scene. As the crowd became increasingly hostile to the police, Detective Wayne Warren arrested one of its most vocal members, Yanta Clanton. The trial judge's findings indicate that Coleman then approached Warren and shouted obscenities at him. After Warren warned her to step back, she again approached him and he pushed her to the ground, informing her that she was under arrest. At that point, Coleman disappeared into the crowd. However, Coleman remained at the scene and the officers handcuffed her and placed her in custody a short time later. At the time trial commenced, the State contended that Coleman attempted to pull away from Warren when he attempted to place handcuffs on her.

(3) An individual is guilty of resisting arrest when "the person intentionally prevents or attempts to prevent a peace officer from effecting an arrest or detention of the person or another person or intentionally flees from a peace officer who is effecting an arrest."¹ The facts alleged by the State reveal two separate incidents, each of which separately meet criteria for resisting arrest. The

¹ Del. Code Ann. tit. 11 § 1257.

first instance is Coleman's retreat into the crowd after Warren had announced that she was under arrest. If proved, as the trial court believed they were, these facts would amount to an act of "intentionally flee[ing] from a peace officer who is effecting an arrest." The second incident was Coleman's alleged "pulling away" when the officers later attempted to handcuff her. That would be an act of intentionally attempting to prevent an officer from "effecting the arrest or detention of the person."

(4) The State's information charged that Coleman resisted arrest when she "attempted to pull away from [Detective Warren] when [he] attempted to place handcuffs on her after [he] told her she was under arrest."² After testimony from the arresting officer that Coleman did not, in fact, pull away from him when he placed handcuffs on her, the State moved to amend the information by removing the portions relating to placing Coleman in handcuffs. The trial judge took the matter under advisement and granted the State's motion at the conclusion of trial. The trial judge then found that the State proved that Coleman had returned to the crowd after Detective Warren announced that she was under arrest and that this action met the elements of Resisting Arrest as stated in the amended information.

² Testimony at trial and the trial judge's findings of fact indicate that Detective Rodney Layfield placed the handcuffs on Coleman after being informed that she was under arrest by Detective Warren. However, this discrepancy is in no way dispositive of this case.

(5) Family Court Criminal Rule 7(e) allows the Court to amend an indictment or information at any time before the verdict or finding *if no additional or different offense is charged and if substantial rights to the defendant are not prejudiced*. We find that the amendment in question charged an additional offense. Coleman’s actions, as originally alleged by the police, constituted two separately identifiable instances of resisting arrest. The first was Coleman’s return to the crowd after Warren announced that she was under arrest. The second was her “pulling away” as Layfield attempted to place her in handcuffs. The State’s original information charged Coleman only with the single count stemming from the handcuffing incident that the State specifically referenced in the information. The State moved to amend the information only after it was readily apparent that the facts would not support a conviction for the handcuffing incident. In this instance, the amendment required that Coleman defend against elements of Resisting Arrest that were wholly distinct from those originally charged. This constitutes an additional offense and thus falls outside the permissible scope of Rule 7(e).

(6) Finally, we have long held that the purpose of Rule 7(e) is to afford the accused two protections: (i) notice of the charges against him so that he has an opportunity to prepare an adequate defense and (ii) prevention of an individual

twice being placed in jeopardy for the same offense.³ The State's failure to include Coleman's "disappearance" into the crowd as an act of alleged misconduct in its information before trial impermissibly denied her the very notice that an information or indictment is intended to provide.

THEREFORE, IT IS ORDERED, that the Family Court's judgment of delinquency be REVERSED.

BY THE COURT:

/s/ Myron T. Steele
Justice

³ *Keller v. State*, 425 A.2d 152, 155 (Del. 1981) (citing *State v. Blendt*, 120 A.2d 321 (Del. Super. Ct. 1956).