

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

KYREEM DEMARIUS BUTLER

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1109 EDA 2013

Appeal from the Judgment of Sentence March 12, 2013  
In the Court of Common Pleas of Delaware County  
Criminal Division at No(s): CP-23-CR-0007733-2012

BEFORE: GANTMAN, J., DONOHUE, J., and OLSON, J.

MEMORANDUM BY GANTMAN, J.:

**FILED DECEMBER 03, 2013**

Appellant, Kyreem Demarius Butler, appeals from the judgment of sentence entered in the Delaware County Court of Common Pleas, following his bench trial conviction of resisting arrest.<sup>1</sup> We affirm.

In its opinion, the trial court fully and correctly sets forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them.

Appellant raises the following issue for our review:

WHETHER THE EVIDENCE WAS INSUFFICIENT TO ESTABLISH BEYOND A REASONABLE DOUBT ALL THE ELEMENTS OF THE CRIME OF RESISTING ARREST WHERE THE TESTIMONY PRESENTED AT TRIAL REVEALS [NOTHING] MORE THAN THAT [APPELLANT] ESSENTIALLY

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<sup>1</sup> 18 Pa.C.S.A. § 5104.

FLED THE SCENE WHEN THE INVESTIGATING OFFICER ATTEMPTED TO DETAIN HIM.

(Appellant's Brief at 7).

When examining a challenge to the sufficiency of evidence, our standard of review is as follows:

The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the [trier] of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

***Commonwealth v. Hansley***, 24 A.3d 410, 416 (Pa.Super. 2011), *appeal denied*, 613 Pa. 642, 32 A.3d 1275 (2011) (quoting ***Commonwealth v. Jones***, 874 A.2d 108, 120-21 (Pa.Super. 2005)).

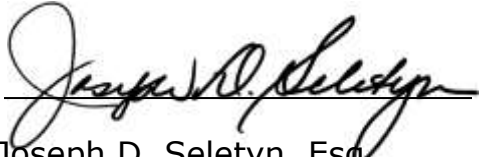
After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable James P. Bradley, we conclude Appellant's issue merits no relief. The trial court

opinion comprehensively discusses and properly disposes of the question presented. (**See** Trial Court Opinion, dated June 18, 2013, at 3-5) (finding: Appellant was under official detention at time he elected to flee scene; officer approached Appellant and informed Appellant that he was under arrest for loitering, which qualifies as “any other detention for law enforcement purposes” pursuant to 18 Pa.C.S.A. § 5121(e) (defining “official detention”); totality of circumstances indicates no ambiguity that Appellant knew he was under arrest and, therefore, under official detention; pursuing officer was compelled to chase Appellant through parking lot, across heavily traveled road, through various backyards, and over fences, at high rate of speed and in dark; Appellant’s actions exposed public and pursuing officers to substantial danger; Appellant’s actions created substantial risk of bodily injury to pursuing officer or member of public; evidence at trial was sufficient to establish beyond reasonable doubt that Appellant was guilty of resisting arrest). The record supports the trial court’s decision; therefore, we see no reason to disturb it. Accordingly, we affirm on the basis of the trial court’s opinion.

Judgment of sentence affirmed.

J-S64033-13

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 12/3/2013

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

CIVIL ACTION – LAW

COMMONWEALTH OF PENNSYLVANIA : NO. CP-23-CR-7733 of 2012

Appellee : 1109 EDA 2013

v. :

KYREEM DEMARIUS BUTLER :

Appellant :

GENA GORBHEY, ESQUIRE, COMMONWEALTH

PATRICK J. CONNORS, ESQUIRE, DEFENDANT

DATE FILED: June 18, 2013

OPINION

The defendant was charged with Resisting Arrest, 18 Pa.C.S.A. §5104 Loitering and Prowling, 18 Pa. C.S.A. §5506 and other offenses . Defendant waived a jury trial and the matter was presented for Bench Trial conducted on March 12, 2013. Defendant was convicted of Resisting Arrest and the instant appeal follows.

In Defendant's Statement of Matters Complained of on Appeal, the defendant raises a single issue: " the evidence was insufficient to establish beyond a reasonable doubt all the elements of the crime of Resisting Arrest where the testimony presented at trial reveals nothing more than that Mr. Butler essentially fled the scene when the trial investigating officers attempted to detain him." (See, Defendant's 1925 (b) Statement).

18 Pa.C.S.A. § 5104, **Resisting Arrest or other law enforcement:**

**A person commits a misdemeanor of the second degree if, with the intent of preventing a public servant from effecting a lawful arrest or discharging any other duty, the person creates a substantial risk of bodily injury to the public**

**servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.**

The relevant facts are these: on the evening of October 12, 2012, at approximately 9:52 pm. Officer Louis P. Garay, Jr. of the Folcroft Police Department was on routine patrol in or about the vicinity of Star Buy Store in Folcroft, Delaware County. Officer Garay testified that there was a problem with loitering in the Borough of Folcroft, in particular in instances where individuals were harassed while entering or leaving commercial establishments (N.T., 3/12/2013, p. 7-8). In addition, the Officer testified that there was a local borough ordinance concerning loitering, which requires individuals to disperse when requested by police (N.T., 3/12/2013, p. 8).

On the night in question, as Officer Garay approached the Star Buy Store, he "observed two males standing out front of the Star Buy Store, in front of the entrance prohibiting the free flow of any foot traffic that would go either down the sidewalk or into the store." (N.T., 3/12/2013, p. 7). Officer Garay therefore approached the individuals, including the defendant, and advised them that they were loitering and demanded that they leave the area. (N.T., 3/12/2013, p. 9).

In response to questions as to whether the defendant complied with the request to leave the area, Officer Garay testified as follows:

Well, again he was advised to leave the area. He began to walk in a circle in the parking lot and kind of aimlessly ignore me to say the least. At that time I asked him for his identification. He stated to me that I didn't need that information. At which time I told him he was under arrest, to place his hands behind his back. He was under arrest for loitering at that time. And Mr. Butler took off running from me towards Summit Avenue from the front of the store. (N.T., 3/12/2013, p. 9).

Officer Garay was in full uniform at the time of the attempted arrest and he clearly informed the defendant that he was under arrest. (N.T., 3/12/2013, p.10). Thus, it

can be concluded that the defendant was under official detention at the time that he elected to flee the scene. As the defendant fled the scene, the officer requested several times that he stop running, to no avail. The Officer then stated that he used his Taser to stop the defendant, and that although he hit the defendant with the Taser, it seemed to have no effect and the defendant kept fleeing (N.T., 3/12/2013, p.10-11).

Despite the Taser incident, the defendant continued to run from the officer. Eventually, the defendant's escape route led through the back yards of a series of row homes which were separated from each other by fences. The Officer was compelled to chase after the defendant and to scale a series of fences, in the dark and on the run. Throughout the chase, the Officer testified that he continued to shout out to the defendant to stop. (N.T., 3/12/2013,p.11). The defendant successfully eluded the arresting officer and was then apprehended by another officer who arrived on the scene. (N.T., 3/12/2013, p. 12).

Defendant's appeal raises two questions: first, was the defendant under official detention; and, secondly, did the defendant's actions "create a substantial risk of bodily injury to the public servant or anyone else, or employ(s) means justifying or requiring substantial force to overcome the resistance." 18 Pa.C.S.A. § 5104.

In Commonwealth v. Colon, the court held:

A person commits the offense of escape "if he unlawfully removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period." 18 Pa.C.S.A. § 5121(a). The phrase "official detention" means "arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged or found to be delinquent, detention for extradition or deportation, or any other detention for law enforcement purposes; but the phrase does not include supervision of probation or parole, or constraint incidental to release on bail." 18 Pa.C.S.A. § 5121(e).

Appellant argues there was insufficient evidence to find that he was under "official detention" as required by the escape statute.<sup>2</sup> In response the Commonwealth states that the totality of the circumstances established an official detention. When evaluating a challenge to the sufficiency of the evidence, this Court must view all evidence in the light most favorable to the Commonwealth as verdict winner, together with reasonable inferences therefrom, to determine whether the jury could have found each element of the crime charged beyond a reasonable doubt. *Commonwealth v. Stewart*, 436 Pa.Super. 626, 648 A.2d 797 (1994). The *Stewart* Court held defendant was under official detention when a uniformed officer, with gun drawn, requested that Stewart turn off his car and place his hands on the dashboard in response to a report of a domestic dispute. Accordingly, when defendant drove away, it constituted the crime of escape. *Com. v. Colon*, 719 A.2d 1099, 1100-01 (Pa. Super. Ct. 1998)

In the instant case, the defendant was approached by the officer, and had been informed that he was under arrest for loitering. These actions qualify as "any other detention for law enforcement purposes", as stated in the statute. (18 Pa.C.S.A. § 5121(e)). In reviewing the totality of the circumstances, there was no ambiguity and the defendant knew that he was under arrest and therefore, under official detention.

Once under official detention, did the defendant's actions in attempting to flee and elude arrest constitute resisting arrest as defined in the statute?

In *Commonwealth v. Miller*, the court held:

Resisting arrest has been made a misdemeanor of the second degree by Section 5104 of the Crimes Code. The offense is committed when "... with the intent of preventing a public servant from effecting a lawful arrest or discharging any other duty, [a] person creates a substantial risk of bodily injury to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance."

The intent of this section is "to confine the offense to forcible resistance that involves some substantial danger to the person." S. Toll, *Pennsylvania Crimes Code Annotated* § 5104 (1974), quoting Model Penal Code Comment, Tent. Draft No. 8, pp. 129-130. As a general rule, therefore, it is not criminal merely to "flee arrest." However, "where the circumstances of the flight expose the pursuing officers to substantial danger" a conviction for resisting arrest is proper. *Id.* The statute, it is clear, does not require the aggressive use of force such as a striking or kicking of the officer.<sup>4</sup> A person *resists* arrest by conduct which "creates a substantial risk of

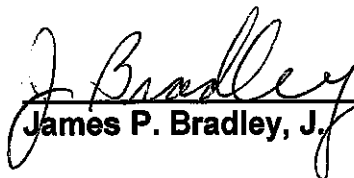


bodily injury” to the arresting officer or by conduct which justifies or requires “substantial force to overcome the resistance.” Com. v. Miller, 327 Pa. Super. 154, 156, 475 A.2d 145, 146 (1984)

In the instant case, the defendant’s actions did, in fact, expose the public and the pursuing officers to a substantial danger. As a result of the defendant’s actions, the pursuing officer was compelled to chase after the defendant through a parking lot, across a heavily traveled road, through various backyards and over fences, at a high rate of speed and in the dark. The possibilities for injury to the defendant, the pursuing officer or another member of the public who may have happened upon the scene, are clear and obvious. The defendant’s actions therefore created a substantial risk of bodily injury to either the pursuing officer or a member of the public.

For the foregoing reasons, the evidence at trial was sufficient to establish beyond a reasonable doubt that the defendant was guilty of resisting arrest.

**BY THE COURT:**

  
James P. Bradley, J.

OFFICE OF  
JUDICIAL SERVICES  
101 MARKET STREET  
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2013 JUN 18 AM 10:00

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