

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

FILED
2018 MAR 19 PM 2:50
BARBARA A. WIEDENBEIN
CLERK OF COMMON PLEAS COURT
CLERMONT COUNTY, OH

STATE OF OHIO :
Plaintiff : **CASE NO. 2017 CR 00649**
vs. : **Judge McBride**
JOHN R. PRIBBLE : **DECISION/ENTRY**
Defendant :

Robert A. Herking, assistant prosecuting attorney for the state of Ohio, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103.

Greg Hoffman, assistant public defender and counsel for the defendant John R. Pribble, 302 East Main Street, Batavia, Ohio 45103.

This cause came before the court for a bench trial on February 8, 2018. At the conclusion of the trial, the court took the issues raised in the trial under advisement.

The defendant John R. Pribble was indicted in Case No. 2017 CR 000649 on November 14, 2017 on the following counts: (1) assault (on a peace officer while performing official duties) in violation of R.C. 2903.13(A), a felony of the fourth degree, and (2) resisting arrest in violation of R.C. 2921.33(B), a misdemeanor of the first degree.

Upon consideration of the record of the proceedings, the evidence presented for the court's consideration, the oral arguments of counsel, and the applicable law, the court now renders this written decision.

FINDINGS OF FACT

The court makes the following findings of fact based upon the testimony of the witnesses and the exhibits it found to be admissible, credible, and reliable as presented at trial:

On October 11, 2017, Officer Jordan Meinking, accompanied by Officer Jason Mallot, drove to 714 Market Street in the Village of New Richmond, Clermont County, for the purpose of arresting the defendant John R. Pribble on an outstanding felony warrant. Both officers are employed by the Village of New Richmond Police Department.

Officer Meinking has had interactions with the defendant in the past. The defendant had not become violent with Officer Meinking on those previous occasions.

The officers arrived at the defendant's property at approximately 5:30 p.m. There are three trailers on the property, which are at the end of a gravel driveway, and the defendant's sister lives in one of the trailers.

At the time, the defendant had been staying with his sister, Tammy Donley, for approximately two weeks. Officer Meinking drove his cruiser up the driveway and parked it. Officer Mallot parked behind him. They noticed that the defendant was in the driveway working near the rear of his white SUV.

Officer Meinking approached the defendant, advised him of the warrant, and informed him that he was under arrest. The defendant willingly placed his hands behind his back, and Officer Meinking handcuffed him.

Officer Mallot conducted a pat down of the defendant and discovered a hypodermic needle in the defendant's front pocket. Officer Meinking admonished the defendant for

not mentioning the needle on him earlier, as it could have injured either officer. As Officer Meinking continued to admonish the defendant, the defendant referred to the officer as a "tough guy."

Officer Mallot took the needle back to his vehicle as potential evidence. Meanwhile, Officer Meinking walked the defendant toward his police cruiser.

Officer Meinking walked behind the defendant and had his hand on the chain of the defendant's handcuffs. Due to the fact that the defendant has pins and a rod in one of his ankles, he was wearing boots that were too large in order to make his ankle more comfortable. Additionally, the boots had not been laced up. As a result, the defendant could not walk as fast as Officer Meinking was walking. When the pair was about fifteen feet from Officer Meinking's cruiser, the defendant lifted his foot to take a step and ending up stumbling forward. In doing so, Officer Meinking mistook the defendant's movement as resisting arrest. He yelled at the defendant to "stop resisting."

Officer Meinking then pulled the defendant's arms up and pushed the defendant onto the hood of his police cruiser. Officer Mallot had not seen the stumble, but when he heard Officer Meinking yelling at the defendant, he rushed over to help. He also placed his body weight against the defendant, pinning him against Officer Meinking's cruiser, and secured the defendant's wrists.

That same day, Officer Meinking had scratches to his left forearm and left ring finger. Officer Meinking states that the scratches were caused when the defendant somehow used the handcuffs which were secured behind the defendant's back to scrape his arm. However, it is not clear to the court how the scratches and redness on Officer Meinking's arm were caused.

STANDARD OF REVIEW

In a criminal case, it is the state's burden to prove the defendant's guilt beyond a reasonable doubt.¹ R.C. 2901.05(E) describes reasonable doubt as follows:

"'Reasonable doubt' is present when the [trier of fact], after * * * carefully consider[ing] and compar[ing] all the evidence, cannot say they are firmly convinced of the truth of the charge. It is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt. 'Proof beyond a reasonable doubt' is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of the person's own affairs."

Further, "[i]t is axiomatic that the state must prove each and every element of an offense * * *."² As the trier of fact, the court "* * * makes the determinations of credibility and the weight to be given to the evidence."³

LEGAL ANALYSIS

I. ASSAULT (ON A PEACE OFFICER WHILE PERFORMING OFFICIAL DUTIES)

¹ R.C. 2901.05(A).

² *State v. Jones*, 91 Ohio St. 3d 335, 347, 744 N.E.2d 1163 (2001). See *State v. Brown*, 12th Dist. Warren No. CA2006-10-120, 2007-Ohio-5787, ¶ 29 ("The state has a duty to present evidence, beyond a reasonable doubt, as to each and every element of the crime as set forth in the indictment.")

³ *State v. Burrell*, 12th Dist. Fayette No. CA2016-04-005, 2016-Ohio-8454, ¶ 22, citing *State v. Erikson*, 12th Dist. Warren No. CA2014-10-131, 2015-Ohio-2086, ¶ 42.

In count number one of the indictment, the defendant is charged with assault on a peace officer while performing his official duties in violation of R.C. 2903.13(A), a felony of the fourth degree. Assault is criminalized in R.C. 2903.13(A): "No person shall knowingly cause or attempt to cause physical harm to another or to another's unborn."⁴

The term "knowingly" is defined in R.C. 2901.22(B):

"A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact."⁵

The term "physical harm" is defined to mean " * * * any injury, illness, or other physiological impairment, regardless of its gravity or duration."⁶

Typically assault is a first degree misdemeanor.⁷ However, when the victim is a peace officer engaged in the performance of official duties, " * * * the crime is elevated to a felony of the fourth degree."⁸ A peace officer is defined in R.C. 2935.01(B), which provides, in relevant part, that a peace officer includes a " * * * member of the organized police department of any municipal corporation * * *."⁹

⁴ R.C. 2903.13(A). See *State v. Bai*, 12th Dist. Butler No. CA2010-05-116, 2011-Ohio-2206, ¶ 40, quoting R.C. 2903.13(A) (holding same).

⁵ R.C. 2901.22(B).

⁶ R.C. 2901.01(A)(3). See *Bai*, 2011-Ohio-2206 at ¶ 41, quoting R.C. 2901.01(A)(3) (holding same).

⁷ *State v. Watson*, 12th Dist. Madison No. CA2005-12-038, 2007-Ohio-129, citing R.C. 2903.13(C).

⁸ *Watson*, 2007-Ohio-129 at ¶ 6.

⁹ R.C. 2935.01(B).

The court finds that the state has not proven beyond a reasonable doubt that the defendant knowingly caused or attempted to cause physical harm to Officer Meinking, who was a police officer performing his official duties. The court believes that the defendant stumbled when his boot began to come off of his foot, and as a result he fell forward. Officer Meinking mistook this action as the defendant resisting arrest. Moreover, although the evidence shows that Officer Meinking did have abrasions to his arm and finger, the court cannot find beyond a reasonable doubt that it was the defendant who caused those injuries. Beyond that, even if the court were able to find that the defendant caused the injuries, the court cannot find that the defendant caused or attempted to cause those injuries knowingly. As a result of these findings, the defendant must be acquitted of assault.

II. RESISTING ARREST

In count number two of the indictment, the defendant is charged resisting arrest in violation of R.C. 2921.33(B), a misdemeanor of the first degree. Resisting arrest is criminalized in R.C. 2921.33(B), which provides: "No person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another person and, during the course of or as a result of the resistance or interference, cause physical harm to a law enforcement officer."¹⁰

A term "recklessly" is defined in R.C. 2901.22(C):

"A person acts recklessly when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person's conduct is likely to cause a

¹⁰ R.C. 2921.33(B).

certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that such circumstances are likely to exist.”¹¹

The term “force” is defined “* * * as any violence, compulsion or constraint physically exerted by any means upon or against a person or thing.”¹² As discussed in Section I, “physical harm” includes “* * * any injury, illness, or other physiological impairment, regardless of its gravity or duration.”¹³

Thus, to show resisting arrest under R.C. 2921.33(B), the state must prove beyond a reasonable doubt that the defendant (1) recklessly or by force, (2) resisted or interfered with (3) a lawful arrest, and (4) in the course of resisting, the law enforcement officer was injured.¹⁴ An arrest is lawful when the “* * * surrounding circumstances would give a reasonable police officer cause to believe that an offense has been or is being committed.”¹⁵

The court, as factfinder, concludes that the first, second, and fourth elements are lacking. As discussed, it is the court’s finding that the defendant stumbled due to his

¹¹ R.C. 2901.22(C).

¹² *State v. Pierce*, 3d Dist. Seneca No. 13-16-36, 2017-Ohio-4223, ¶ 19, quoting *State v. Dice*, 3d Dist. Marion No. 9-04-41, 2005-Ohio-2505, ¶ 27.

¹³ R.C. 2901.01(A)(3). See *State v. Madding*, 2d Dist. Montgomery No. 24412, 2011-Ohio-3865, ¶41, quoting R.C. 2901.01(A)(3) (holding same).

¹⁴ See *Middleburg Hts. v. Lasker*, 2016-Ohio-5522, 76 N.E.3d 372, ¶ 24 (8th Dist.), quoting *State v. Fussell*, 8th Dist. Cuyahoga No. 95906, 2011-Ohio-4815, ¶ 21 (explaining that the only difference between R.C. 2921.33(A) and (B) is that subsection (B) adds an element that in the course of resisting, the law enforcement officer is injured); *Pierce*, 2017-Ohio-4223 at ¶18 (for resisting arrest under R.C. 2921.33(A), the state must show the defendant (1) recklessly or by force, (2) resisted or interfered with (3) a lawful arrest).

¹⁵ *Pierce*, 2017-Ohio-4223 at ¶ 21, quoting *State v. Blair*, 2d Dist. Montgomery No. 24784, 2012-Ohio-1847, ¶ 8.

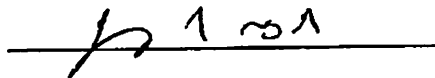
loose boots and involuntarily began to fall.¹⁶ The court cannot find, based on the evidence presented, that the defendant, either recklessly or by force, raked Officer Meinking's arm with his handcuffs, nor does the court believe that the defendant resisted or interfered with Officer Meinking's efforts to arrest him. Although the court believes that Officer Meinking sustained some kind of harm to his left arm and finger, the court cannot find that the defendant caused such harm. As such, the defendant must be acquitted of the charge of resisting arrest.

CONCLUSION

The court finds that the state has not proven either of the two charges against the defendant beyond a reasonable doubt, those being assault on a peace officer while performing official duties as charged in count number one of the indictment and resisting arrest as charged in count number two of the indictment. Accordingly, the defendant is acquitted of both charges.

IT IS SO ORDERED.

DATED: 3-16-18



Judge Jerry R. McBride

¹⁶ Cf. *Lasker*, 2018-Ohio-5522 at ¶ 25 (affirming the defendant's conviction for resisting arrest under R.C. 2921.33 where the defendant "tried to 'pull away' from the officers" causing them to all fall to the ground and struggle).