

[Cite as *State v. Mahalli*, 2016-Ohio-940.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103183

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

SAID MAHALLI

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-585604-A

BEFORE: Jones, A.J., Keough, J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: March 10, 2016

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LARRY A. JONES, SR., A.J.:

{¶1} Defendant-appellant, Said Mahalli, appeals his conviction for resisting arrest. We affirm.

{¶2} In 2014, Mahalli was charged with assault on a peace officer, resisting arrest, and obstructing official business. The matter proceeded to a jury trial at which the following pertinent evidence was presented.

{¶3} On May 14, 2014, Officer Steven Crone of the Cleveland Heights Police Department pulled over Mahalli's son, Netanel, for speeding on Euclid Heights Boulevard. During the traffic stop Netanel called his father to let him know he would be late for their meeting and he might need a jump start for his van.

{¶4} Mahalli drove to his son's location. Mahalli was traveling westbound and crossed over into the eastbound lane. He stopped in front of Netanel's van so that his and his son's vehicle hoods were facing each other. Mahalli got out of his vehicle and approached Officer Crone, questioning why the officer had pulled over his son.

{¶5} Officer Crone told Mahalli to get back in his car and move it because he was blocking traffic on the two lane road and creating a hazard. Mahalli got back in his car, put it in reverse gear, and did a 360 degree turn into traffic. The officer testified that when Mahalli did the 360 degree turn, he turned his car into westbound traffic, which caused other cars to slam on their brakes to avoid hitting him. According to Officer Crone, he had to step away from Netanel's van and into the flow of traffic to stop traffic so Mahalli would not cause an accident. At this point, he thought Mahalli was going to

drive away, but instead Mahalli pulled his vehicle into an adjacent driveway.

{¶6} Officer Crone gave Netanel his citation and told him he was free to leave, but warned Netanel not to get out of his car. The officer then walked over to where Mahalli had parked his car because Mahalli had already exited his car and was waving his arms in the air and yelling at the officer.

{¶7} Officer Crone directed Mahalli to get back in his car several times but Mahalli responded that he did not have to comply. Mahalli approached Officer Crone with his keys in one hand and an unidentifiable object in the other hand (the object was later identified as a cell phone).

{¶8} Mahalli continued to approach Officer Crone, despite the officer's attempts to keep a "buffer" between himself and Mahalli and repeated the command for Mahalli to get back in his car. Officer Crone radioed for help, drew his gun, and again told Mahalli to get back in his car. Out of the corner of his eye, Officer Crone saw movement and realized that Netanel had gotten out of his car and was approaching the officer. Netanel testified that he got out of his car because he saw the officer draw his weapon and Netanel wanted to try and diffuse the situation. Around the same time as Netanel started to walk towards Officer Crone, a fellow officer arrived on scene. Officer Crone reholstered his weapon.

{¶9} Officer Crone reached out and took hold of Mahalli's arm, but, according to the officer, Mahalli pulled away and punched him in the arm. Officer Crone tried again to grab Mahalli, but the man pulled away and shoved the officer. It took three police

officers to handcuff and arrest Mahalli.

{¶10} Netanel testified that Officer Crone was the one acting aggressive towards his father, and insisted that his father was only acting “slightly obnoxious” towards the officer. Netanel denied that his father ever punched or pushed the officer.

{¶11} The jury acquitted Mahalli of assault on a peace officer and obstructing official business but convicted him of resisting arrest. The trial court sentenced Mahalli to five days of jail, with credit for three days served, and court costs.

{¶12} Mahalli filed a motion for leave to file a delayed appeal, which this court granted. Mahalli raises one assignment of error for our review:

Because the arrest of Appellant was objectively unlawful, the trial court erred by failing to grant a judgment of acquittal, pursuant to Crim.R. 29(A), on the charge of resisting arrest, and thereafter entering a judgment of conviction of that offense which was not supported by sufficient evidence, in derogation of Appellant’s right to due process of law, as protected by the Fourteenth Amendment to the United States Constitution.

{¶13} In his sole assignment of error, Mahalli challenges the sufficiency of the evidence as it relates to his conviction for resisting arrest.

{¶14} A Crim.R. 29(A) motion for acquittal tests the sufficiency of the evidence. *State v. Hill*, 8th Dist. Cuyahoga No. 98366, 2013-Ohio-578, ¶ 13. Crim.R. 29 mandates that the trial court issue a judgment of acquittal where the state’s evidence is insufficient to sustain a conviction for an offense. *State v. Taylor*, 8th Dist. Cuyahoga No. 100315, 2014-Ohio-3134, ¶ 21. Accordingly, we review a trial court’s denial of a defendant’s motion for acquittal using the same standard we apply when reviewing a sufficiency of the evidence claim. *Id.* at ¶ 21-23, citing *Cleveland v. Pate*, 8th Dist. Cuyahoga No.

99321, 2013-Ohio-5571.

{¶15} When reviewing the sufficiency of the evidence, an appellate court must determine “whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229, ¶ 77, quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. When performing a sufficiency inquiry, an appellate court does not assess whether the state’s evidence is to be believed but whether, if believed, the evidence admitted at trial supported the conviction. *State v. Starks*, 8th Dist. Cuyahoga No. 91682, 2009-Ohio-3375, ¶ 25, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *Jenks at id.*

{¶16} R.C. 2921.33(A), resisting arrest, provides that “[n]o person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another person.” One of the required elements of resisting arrest is an underlying lawful arrest. *State v. Barker*, 128 Ohio App.3d 233, 240, 714 N.E.2d 447 (6th Dist.1998), citing *State v. Hendren*, 110 Ohio App.3d 496, 498, 674 N.E.2d 774 (11th Dist.1996).

{¶17} Mahalli argues that his arrest was unlawful. An arrest is lawful if the officer had probable cause to believe a crime was committed by the defendant, even if the defendant is ultimately found not guilty of that particular offense. *Barker at id.*, citing *N. Ridgeville v. Reichbaum*, 112 Ohio App.3d 79, 85, 677 N.E.2d 1245 (9th Dist.1996). Thus, the requirement for a valid warrantless arrest is not that the officer have “absolute

knowledge that a misdemeanor is being committed in the sense of possessing evidence sufficient to support a conviction after trial,” but, rather, that the officer “be in a position to form a reasonable belief that a misdemeanor is being committed, based upon evidence perceived through [the officer’s] own senses.” *Columbus v. Lenear*, 16 Ohio App.3d 466, 468, 476 N.E.2d 1085 (10th Dist.1985). In other words, an arrest is “lawful” if the surrounding circumstances would give a reasonable police officer cause to believe that an offense has been or is being committed. *State v. Sansalone*, 71 Ohio App.3d 284, 285, 593 N.E.2d 390 (1st Dist.1991), citing *Parma Hts. v. Kaplan*, 8th Dist. Cuyahoga No. 55108, 1989 Ohio App. LEXIS 1126 (Mar. 30, 1989).

{¶18} This court recognized as much in a case Mahalli relies on, *Cleveland v. Swiecicki*, 149 Ohio App.3d 77, 2002-Ohio-4027, 775 N.E.2d 899 (8th Dist.). In *Swiecicki*, the defendant was convicted of disorderly conduct and resisting arrest after being thrown out of a Cleveland Indians baseball game for heckling one of the players and getting into a confrontation with the police officer trying to remove him from the stands. This court noted that in order to uphold a conviction for resisting arrest, it is not necessary for the prosecution to prove guilt of the underlying offense. But this court found that the defendant’s arrest was unlawful because the heckling did not provide a reasonable police officer the basis to believe the defendant’s conduct constituted a criminal offense and because the arrest was based on conduct the defendant committed while being escorted out of the stadium, not based on the belief that the defendant had already committed the crime of disorderly conduct. *Id.* at 81-82.

{¶19} This case is distinguishable. Officer Crone testified that he placed Mahalli under arrest for obstructing official business, a violation of R.C. 2921.31(A). R.C. 2921.31(A) provides:

No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within his official capacity, shall do any act which hampers or impedes a public official in the performance of his lawful duties.

{¶20} Even though the jury acquitted Mahalli of the obstructing official business charge, if Officer Crone reasonably believed that Mahalli had committed, or was in the process of committing the offense, the arrest was lawful.

{¶21} Mahalli also cites *U.S. v Rodriguez*, 575 U.S. ___, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015), where the United State Supreme Court held that a traffic's stop tolerable duration is determined by the seizure's mission, which is to address the traffic violation that warranted the stop and attend to related safety concerns. But Mahalli is not challenging, and would not have standing to challenge, the validity of his son's traffic stop; therefore, *Rodriguez* does not apply to this case.¹

{¶22} Officer Crone testified that he was standing at Netanel's car and was in the process of issuing him a speeding ticket when Mahalli drove the wrong way in a lane of travel and pulled in front of Netanel's car. Both Officer Crone and Netanel testified that

¹Even if we were to find that *Rodriguez* did apply, we would find that the officer was attending to "related safety concerns" in dealing with Mahalli.

Mahalli exited his car while the officer was still in the process of issuing the speeding ticket. Mahalli, whose car was blocking traffic and creating a hazard, started questioning Officer Crone. When Mahalli finally moved his car, he made a 360 degree turn into traffic and caused traffic to abruptly stop. Officer Crone had to stop what he was doing and move away from Netanel's car to direct traffic so that Mahalli would not cause an accident.

{¶23} Officer Crone gave Netanel his citation and told him he was free to leave. This ended the traffic stop. Mahalli began to move towards Officer Crone, holding something that Officer Crone could not see. Mahalli refused to comply with Officer Crone's commands and kept walking towards the officer, despite the officer's attempts to keep a "buffer" between himself and Mahalli and repeated commands for Mahalli to get back in his car.

{¶24} Officer Crone radioed for help, drew his gun, and again told Mahalli to get back in his car, but Mahalli ignored him. Officer Crone saw Netanel, who the officer had told to remain in his car, approaching the scene. Officer Crone tried to take hold of Mahalli to place him under arrest but Mahalli pulled away and then punched and shoved the officer. It took three police officers to subdue and arrest Mahalli.

{¶25} Although Officer Crone had finished with the traffic stop of Netanel by the time he approached Mahalli's car, a reasonable police officer could believe that Mahalli obstructed the traffic stop at the point Mahalli first drove into the opposite lane of traffic, parked his car so as to create a hazard, and got out of his vehicle to confront the officer or

at any point in the confrontation thereafter.

{¶26} In light of these facts, we find that the arrest was lawful and the evidence sufficient to support Mahalli's conviction for resisting arrest.

{¶27} The sole assignment of error is overruled.

{¶28} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, SR., ADMINISTRATIVE JUDGE

KATHLEEN ANN KEOUGH, J., and
EILEEN T. GALLAGHER, J., CONCUR