

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
November 21, 2013

v

LEROY JAMISON,

No. 312139
Calhoun Circuit Court
LC No. 2012-000483-FH

Defendant-Appellant.

Before: WHITBECK, P.J., and WILDER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant, Leroy Jamison, appeals as of right his convictions, following a jury trial, of three counts of resisting or obstructing a police officer (resisting or obstructing).¹ The jury acquitted Jamison of one count of resisting or obstructing and one count of trespassing.² Because (1) police officers had probable cause to arrest Jamison for trespassing at the time that they arrested him, and (2) Jamison's subsequent acquittal of trespassing is irrelevant to the legality of his arrest, we affirm.

I. FACTS

A. BACKGROUND FACTS

On November 24, 2010, Jamison accompanied a group of family and friends to a gentleman's club. Benny Mendez, a manager of the club, testified that some customers became hostile and, ultimately, 15 to 20 people were asked to leave. Joshua Thompson, the club's owner, testified that he called the police. Mendez testified that Jamison helped get people into the parking lot. Thompson testified that Jamison was very helpful.

Calhoun County Sheriff's Deputy Timothy Howell testified that he and Deputy Greg McComb were dispatched to the club because patrons were fighting with a bouncer and a gun might be involved. Deputy Howell testified that he began searching a vehicle for the weapon

¹ MCL 750.81d(1).

² MCL 750.552(1)(b).

after he arrived. According to Jamison, he decided to leave the club when he noticed that some of the people in his group were leaving as well. After leaving, he walked to the vehicles that belonged to people in his group. Police officers were searching one of the group's two vehicles for weapons, so he waited by the vehicles.

Deputy Howell testified that shortly after he finished searching the vehicle, Emmett Township Police Officers Matthew Skaggs and Jason Eggerstedt arrived. Deputy Howell testified Mendez informed him that everyone in the parking lot had to leave the premises. Mendez testified that he told police officers to get everyone to leave. Officers Skaggs and Eggerstedt testified that they began trying to get people to leave the parking lot.

According to Jamison, he was standing near his group's vehicles when officers asked him to leave. The car that he was supposed to ride in was being searched, so he approached the group's other vehicle to ask if he could ride in it instead. The occupants of the second vehicle informed him that it was full, and he was walking toward the first vehicle when he was arrested. He told officers to speak with the club's owner, who would tell them that he did not do anything wrong.

Deputy Howell testified that he was standing nearby when Officer Skaggs asked Jamison to leave, and Jamison told Officer Skaggs that he did not have to leave. Deputy Howell testified that Jamison was being "loud and belligerent." According to Deputy Howell, he approached Jamison and tried to calm him down, but Jamison insisted that he did not have to leave because he was not involved in the fight and he knew the owner of the club. Joshua Thompson, the club's owner, testified that Jamison was not trespassing and he would have let him back into the club.

Deputy Howell testified that he spoke with Mendez and specifically asked him if Jamison had to leave the premises. Mendez testified that he told the police that everyone in the parking lot had to leave, including Jamison. Deputy Howell testified that he returned to Jamison, and told him that if he did not leave, he would be arrested for trespassing.

According to Jamison, Officer McComb began kicking him when Jamison asked him to speak to the club's owner, and another officer used a taser on him. According to Deputy Howell, the people who were with Jamison were trying to persuade him to leave. They briefly forced him into a car, but he only stayed in the car for a few seconds before getting out again. Jamison then told Deputy Howell that he was going to go back into the club, and Deputy Howell told him that his choices were to leave the premises or be arrested. When Jamison started walking toward the building, Deputy Howell arrested him.

Deputy Howell testified that after he handcuffed Jamison, he tried to twist, turn, and pull away from officers, refused to get into the patrol car, held himself rigid so that he could not be forced into the patrol car, and continued to struggle. Deputy Howell testified that Officer Eggerstedt eventually used a taser on Jamison to get him into the patrol car.

B. PROCEDURAL HISTORY

At the close of the prosecutor's evidence, Jamison moved for a directed verdict. Jamison asserted in part that he had the right to resist the arrest, which was unlawful because he was not

trespassing. The prosecution responded that Mendez instructed the officers to get everyone to leave and, after Jamison refused their orders to leave, the officers had probable cause to believe that he was trespassing. The trial court denied Jamison’s motion on the basis that the jury could reasonably believe that the arrest was lawful because Mendez told the police officers that everyone in the parking lot must leave.

The jury found Jamison guilty of resisting or obstructing Deputy Howell, Deputy McComb, and Officer Skaggs, and acquitted him of trespassing and resisting or obstructing Officer Eggerstedt.

II. DIRECTED VERDICT OF ACQUITTAL

A. STANDARD OF REVIEW

This Court reviews de novo a trial court’s decision denying a motion for a directed verdict.³ Considering only the evidence provided by the prosecutor, this Court will “review the evidence in a light most favorable to the prosecutor to determine whether a rational trier of fact could have found that the essential elements of the offense were proven beyond a reasonable doubt.”⁴

B. LEGAL STANDARDS

MCL 750.81d(1) provides in part that a person who “. . . obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties is guilty of a felony” However, MCL 750.81d(1) does not abrogate a defendant’s common-law right to resist an unlawful arrest.⁵ A defendant may only be convicted of resisting or obstructing if the prosecution establishes that the officers’ actions were lawful.⁶

C. APPLYING THE STANDARDS

Jamison contends that the trial court erred by denying his motion for a directed verdict because officers unlawfully arrested him for trespassing. We disagree. The officers had probable cause to arrest Jamison for trespassing; therefore, his arrest was lawful.

An officer may arrest a person if the officer “possesses information demonstrating probable cause to believe that an offense has occurred and that the defendant committed it.”⁷ An

³ *People v Couzens*, 480 Mich 240, 244; 747 NW2d 849 (2008).

⁴ *Id.*

⁵ *People v Moreno*, 491 Mich 38, 52; 814 NW2d 624 (2012).

⁶ *Id.* at 51-52.

⁷ *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996). See *People v MacLeod*, 254 Mich App 222, 227-228; 656 NW2d 844 (2002).

officer has probable cause to arrest a person if the officer is aware of facts or circumstances that “warrant a man of reasonable caution in the belief that an offense has been or is being committed.”⁸

We conclude that, considering only the prosecution’s evidence in a light most favorable to the prosecution, a rational trier of fact could have found that the officers lawfully arrested Jamison. An officer may arrest a person when that person has committed a felony, misdemeanor, or ordinance violation in the officer’s presence.⁹ It is a misdemeanor for a person to “[r]emain without lawful authority on the land or premises of another after being notified to depart by the owner or occupant or the agent of the owner or occupant.”¹⁰

Here, Deputy Howell testified that Mendez, the club’s manager, told him to get everyone in the parking lot to leave. Mendez testified that he told the officers that everyone in the parking lot must leave. Deputy Howell testified that after Jamison protested that he knew the owner of the club, he conferred with Mendez, who responded that everyone in the parking lot—including Jamison—was required to leave. Jamison continued to refuse to leave. At that point, Deputy Howell had probable cause to believe that Jamison was remaining on the club’s premises after being notified by an agent of the owner that he must leave. Therefore, Deputy Howell’s arrest of Jamison for trespassing was lawful because he had reason to believe that Jamison was committing a misdemeanor. Because his arrest was lawful, Jamison had no right to resist arrest.

Jamison also briefly contends that his arrest for trespassing was unlawful because the jury acquitted him of trespassing. We reject this assertion. The fact that a person is acquitted of the offense for which he or she was arrested “has no bearing upon the legality of the arrest, anymore than the finding of guilty in a criminal proceeding would legalize an arrest unlawful when made.”¹¹ Thus, we conclude that Jamison’s subsequent acquittal of the charge of trespassing is irrelevant to whether the officers’ arrest was lawful.

We affirm.

/s/ William C. Whitbeck
/s/ Kurtis T. Wilder
/s/ Amy Ronayne Krause

⁸ *Champion*, 452 Mich at 115; *MacLeod*, 254 Mich App at 228.

⁹ MCL 764.15(1)(a).

¹⁰ MCL 750.552(1)(b).

¹¹ *People v Davenport*, 46 Mich App 579, 581-582; 208 NW2d 562 (1973). See *People v Kretchmer*, 404 Mich 59, 63-64; 272 NW2d 558 (1978).