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A Suspect's Use of Force Against a Bystander to Evade Arrest

QUESTION: Is the use of physical force element of resisting arrest limited to force used by the suspect against the arresting officer?

ANSWER: No. All that must be shown is that a legal arrest was resisted by force. The necessary force may be used against someone other than the officer who is attempting to make the arrest.

CASE: *Melvin D. Williams v. State of Maryland*
Court of Special Appeals of Maryland, Decided December 19, 2012

The facts showed that in the late evening of September 15, 2008, Harford County Sheriff's Office Deputies Grant Krulock and Robert Schultz, who were on uniformed bike patrol, observed a man later identified as Melvin D. Williams walking down the middle of the street in a high crime area with his left hand down in his shorts. The deputies mounted their bikes and approached. Deputy Krulock asked Williams, who still had his hand in his shorts, to stop. The deputies spoke with Williams and asked him to remove his hand from his pants. Williams became agitated and argumentative. When he finally removed his hand from his pants, he turned away from the deputies. As Williams brought his hand back to his side, Deputy Krulock saw a small clear plastic bag fall from his hand to the ground. Deputy Krulock ordered Williams to put his hands behind his back. At first, Williams complied, but when the deputy touched his arm, he ran. Deputy Krulock yelled for Williams to stop but he kept running. Deputy Schultz deployed his Taser at Williams but missed. The deputies chased Williams on foot around a residence and back out to the street, where a bystander tackled Williams and held him down. Williams, however, continued to struggle, trying to get away. Deputy Krulock ordered Williams to get on the ground numerous times, but Williams continued to struggle. Deputy Krulock then warned Williams that he would be tased if he didn't comply. The warning had no effect so Deputy Krulock tased Williams and then placed him in handcuffs. Williams was searched incident to his arrest, and a plastic bag containing a small yellowish piece of rock (later determined to be cocaine) was found in Williams' wallet. More drugs were found in the backseat of the vehicle that transported Williams to the station.

Williams was convicted of possession of cocaine and resisting arrest. For the possession offense, Williams was sentenced as a subsequent offender to a term of eight years with all but four suspended. He received a consecutive two year sentence for resisting arrest, with all but one year suspended. Williams appealed. One of the issues on appeal was whether the evidence was legally sufficient to convict Williams of resisting arrest. Williams' argument was based on the fact that he didn't use any "physical force" against the deputies when he tried

to evade them. In other words, Williams contended that the ‘physical force’ he used was against the bystander, not the deputies.

On appeal, the Court of Special Appeals first said that Williams’ merely pulling his hands away from Deputy Krulock and fleeing was not enough to convict him of resisting arrest. That conduct did not amount to resisting arrest by force, a required element, as merely fleeing from an arresting officer is not enough. The question then became whether the force used by Williams *against the bystander* was enough, as Williams used that force while Deputy Krulock repeatedly ordered him to get on the ground. The court said that it was. The court observed that the degree of “physical force” needed to resist arrest was that same as the “offensive physical contact” needed to convict a defendant of a battery variety second degree assault. Since the statute does not specifically state that the force must be used against a police officer, the force used by Williams against the bystander was enough to convict him.

NOTE: Since resisting arrest is such a common charge, officers need to fully understand the elements of the offense as stated in Cr.L § 9-408(b)(1). There are three: (1) that an officer arrested or attempted to arrest the defendant; (2) that the officer had probable cause to make the arrest or attempt to do so; and (3) the defendant refused to submit to the arrest and **resisted by force**. The State must show at trial that the defendant knew that it was a police officer who was trying to arrest him and the defendant intended to resist arrest. Finally, again remember that merely fleeing from an arresting officer is not enough to charge resisting arrest.

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