



LGIT'S ROLL CALL REPORTER JUNE 2012

The offense of resisting arrest does not include a suspect's "mere flight" from the arresting officer

QUESTION: Is a suspect's mere flight to avoid arrest sufficient to charge him or her with resisting arrest?

ANSWER: No. In Maryland, the crime of resisting arrest requires a refusal to submit to a lawful arrest *and* resistance by force. Forceful resistance is required. A suspect's verbal refusal to submit to arrest or flight to avoid arrest, without more, is legally insufficient to support a charge of resisting arrest.

CASE: *Mark T. Rich v. State of Maryland, Court of Special Appeals of Maryland, Decided May 31, 2012*

This case is critically important as it substantially limits the basis for charging a suspect with resisting arrest. The facts established that on February 20, 2009, at 11:00 p.m., Corporal Eric Peterson of the Caroline County Sheriff's Department was on drug patrol as a K-9 officer, accompanied in his patrol car by a drug-detecting dog. He stopped the vehicle in which Mark Terrill Rich was a passenger for an inoperative taillight. Rich's girlfriend, Jennifer Smith, was driving the car. Both got out of the car and Smith consented to be searched. No drugs were found. Rich also consented to be searched, but as Corporal Peterson removed Rich's hat, a bag of marijuana fell into the officer's hands. At that moment, Rich began to run. The officer pursued on foot and tackled Rich about ten to twelve feet from Smith's car. Corporal Peterson then told Rich that he was under arrest, placed his hands behind his back, and handcuffed him. The officer then picked Rich up from the ground without further incident and placed him in the back of Smith's car. Two other officers arrived on the scene. As Corporal Peterson bent down to pick up the marijuana, Rich ran again, this time in the direction of a residence near the stopped cars. Corporal Peterson again chased and tackled Rich and convinced him not to run anymore. Rich then admitted that the marijuana was his and that his girlfriend didn't know about it. No other drugs were found in the car or on Rich's person.

Rich was charged with eight counts, including possession of a controlled dangerous substance, second-degree escape, and resisting or interfering with arrest. Rich proceeded to a trial by jury and was convicted of most of the offenses, including resisting arrest. Rich was sentenced to a term of imprisonment. Rich appealed.

The issue on appeal centered on the resisting arrest conviction. Focusing on his first attempt to flee, Rich contended that “mere flight” to *avoid* arrest was insufficient to sustain the charge of *resisting* arrest. The Court of Special Appeals first explored the crime of resisting arrest in Maryland, noting that it was a common law offense until 2004 when it was codified by statute (§ 9-408(b) of the Criminal Law Article). The statute provides only that “[a] person may not intentionally resist a lawful arrest.” The statute does not define what it means to “resist a lawful arrest.” To determine the meaning of the term, the court reviewed the cases decided over the years concerning the offense of resisting arrest. The court found some inconsistencies but one common thread in all of the cases: physical force is required as an element of resisting arrest. In other words, simple failure to submit to an arrest is insufficient to constitute the crime. Thus, there are three elements of the crime: **(1) a law enforcement officer arrested or attempted to arrest the defendant; (2) the officer had probable cause to arrest the Defendant; and (3) the defendant refused to submit to the arrest and resisted the arrest by force.** Both refusal and actual physical resistance are required. In this regard, resisting arrest stands much different from the offense of resisting, hindering, or obstructing an officer in the performance of his duties. “Hindering” is not dependent on either arrest or physical resistance to it.

Here, since Rich never used force to resist his arrest, the evidence was insufficient to sustain his conviction. The level of physical resistance that would have been required would have been the same kind of “offensive physical contact” as would support a charge of the battery variety of second degree assault.

NOTE: The court drew a fine line between “resisting arrest” and “avoiding arrest.” It concluded that “resisting arrest” requires something more and that something is physical contact. While merely “avoiding” arrest may support a hindering charge, it does not support a resisting arrest charge. Many other states, including Alabama, Arkansas, Delaware, and Texas, when faced with this same issue, have enacted laws making a suspect’s flight a form of resisting arrest. The court in this case recognized that Maryland may want to do the same. The court said, “If the Legislature disagrees with this interpretation, it has the power to amend the statute.” A final note - What if the suspect merely goes “limp” during the arrest? While not an issue in this case, the court did note that most courts in other states “have held that such conduct constitutes force for resistance purposes.”

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