

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
vs.	:	No. CR 786-2016
	:	
ERIC SCHLIER,	:	
	:	
Defendant	:	
Cynthia A. Dydra-Hatton, Esquire	:	Counsel for the Commonwealth
First Assistant District Attorney	:	
Paul J. Levy, Esquire	:	Counsel for Defendant
First Assistant Public Defender	:	

**MEMORANDUM OPINION**

Serfass, J. - January 10, 2020

Eric Schlier (hereinafter "Defendant") has taken this appeal from our Order of Sentence entered in this matter on November 7, 2019. We file the following Memorandum Opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) and recommend that the aforesaid order be affirmed for the reasons set forth hereinafter.

**FACTUAL AND PROCEDURAL BACKGROUND**

On the evening of January 17, 2016, Officer Bruce Broyles of the Lehighton Police Department observed Defendant on Bridge Street in Lehighton operating a bicycle without proper lighting as he proceeded through a stop sign without stopping. Officer Broyles attempted to initiate a stop of Defendant by directing that he pull over on the Weissport bridge. While still moving, Defendant asked why he was

being directed to pull over and Officer Broyles replied that he was attempting to stop him because Defendant committed a traffic infraction. Defendant ignored Officer Broyles' directives at first, then stated he would pull over into the parking lot immediately following the bridge. Once in the parking lot, Officer Broyles observed Defendant begin to accelerate away from him. Officer Broyles pulled his cruiser in front of Defendant's bicycle in order to stop him from leaving the parking lot. Defendant's bicycle collided with the cruiser's passenger side, and Defendant threw his bicycle down and said, "What the fuck is your problem, man?" Officer Broyles then asked Defendant multiple times to turn away from him and place his hands behind his back to detain him. Defendant ignored Officer Broyles' requests. Officer Broyles then grabbed Defendant by the hand, and Defendant asked what Officer Broyles wanted. Again, Officer Broyles asked him to turn away from him and place his hands behind his back. Defendant struggled and did not comply.

Officer Broyles observed the odor of alcohol emanating from Defendant and that Defendant was swaying, had slurred speech, and had bloodshot eyes. When Officer Broyles placed Defendant's right arm into handcuffs, Defendant pulled away from Officer Broyles and was kicking and flailing. Officer Broyles then called for backup. Because Defendant was struggling, Officer Broyles forced Defendant onto the hood of the cruiser to get control of him. Officer Broyles was then able to get Defendant's left arm into the handcuffs, but Defendant continued to kick behind him, striking at Officer Broyles' leg, which

resulted in bruising. To prevent Defendant from kicking him, Officer Broyles took Defendant down to the ground. Defendant was screaming obscenities throughout the altercation. Officer Broyles had to remain on top of Defendant to control him as he thrashed on the ground. After approximately five (5) minutes, several other officers arrived on the scene and one of them helped Officer Broyles move Defendant into the back of his cruiser as Defendant continued to thrash about.

Officer Broyles did not request that Defendant perform field sobriety testing nor request that another officer perform such testing with Defendant. Officer Broyles testified at trial that his reason for arresting Defendant was that he believed Defendant was trying to get away from him when he was attempting to conduct a traffic stop.

Following a jury trial on February 7 and 8, 2019, Defendant was convicted of Resisting Arrest, 18 Pa. C.S.A. § 5104. Defendant was found not guilty of Aggravated Assault, 18 Pa. C.S.A. § 2702(a)(3), Disorderly Conduct, 18 Pa. C.S.A. § 5503(a)(2), and DUI: General Impairment/Incapable of Safe Driving, 75 Pa. C.S.A. § 3802(a)(1). During the trial, this Court granted in part and denied in part Defendant's motion for judgment of acquittal, entering a judgment of acquittal on the charge of Escape, 18 Pa. C.S.A. § 5121(a), and denying Defendant's motion regarding the Aggravated Assault and Resisting Arrest charges. At the conclusion of the trial, this Court found Defendant guilty of the two summary offenses: Lamps and Reflectors, 75 Pa. C.S.A. § 3507(a), and Duties at Stop Sign, 75 Pa. C.S.A. § 3323(b).

On April 22, 2019, Defendant filed a "Motion in Arrest of Judgment" averring that, because he was found not guilty of all charges except the summary offenses and resisting arrest, the underlying arrest was unlawful on the basis of the summary offenses alone and that, as a result, the Commonwealth could not prove every element of the resisting arrest charge. Oral argument on Defendant's motion was held on June 24, 2019. On November 6, 2019, this Court denied Defendant's motion in arrest of judgment, finding that, when viewed in the light most favorable to the Commonwealth, the evidence in this case was sufficient to support the jury's verdict of guilty with regard to the resisting arrest charge.

On November 7, 2019, Defendant was sentenced to a period of incarceration in the Carbon County Correctional Facility of not less than two (2) months nor more than twenty-four (24) months less one day. On November 12, 2019, Defendant filed a notice of appeal with the Superior Court. On November 13, 2019, this Court ordered Defendant to submit a concise statement of the matters complained of on appeal within twenty-one (21) days pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). In compliance with our Order, on November 19, 2019, Defendant filed his concise statement raising the following issue for appellate review:

Whether the evidence was sufficient to establish that Officer Bruce Broyles was effecting a lawful arrest or discharging a duty

as is necessary to establish that Defendant committed the crime of resisting arrest.

### **DISCUSSION**

When reviewing the sufficiency of the evidence, the appellate court considers whether the evidence presented at trial, and all reasonable inferences drawn therefrom, when viewed in a light most favorable to the Commonwealth as the verdict winner, support the jury's verdict beyond a reasonable doubt. Commonwealth v. Johnson, 160 A.3d 127, 136 (Pa. 2017) (citing Commonwealth v. Patterson, 91 A.3d 55, 66 (Pa. 2014)).

One is guilty of the crime of resisting arrest "if, with the intent of preventing a public servant from effecting a lawful arrest or discharging any other duty, the person creates a substantial risk of bodily injury to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance." 18 Pa. C.S.A. § 5104.

In Commonwealth v. Miller, the defendant, his brother, and several companions were causing a disturbance at a bar and the owner called the police. 475 A.2d 145, 146 (Pa.Super. 1984). When police officers arrived, they observed Mr. Miller and his brother shouting obscenities. *Id.* Mr. Miller and his brother then began to berate and curse at the police officers, so the officers ordered them to leave the bar. *Id.* One officer told Mr. Miller in the parking lot that he would be cited for disorderly conduct, that he

would be frisked, and that he would be released as soon as a citation had been prepared. *Id.* Mr. Miller yelled to his brother, who was with another officer, that he was being arrested and then he began to struggle with the officer. *Id.* at 146-47. Two officers attempted to get control of Mr. Miller as he flailed his arms and upper body. *Id.* at 147. Mr. Miller attempted to push through them to go to the aid of his brother, who was also struggling, and resisted the officers' efforts to put him in handcuffs. *Id.* Two officers had to lift Mr. Miller from the ground and push him into the rear of the police vehicle. *Id.* As a result of the struggle, one officer suffered bruising on his leg. *Id.* On appeal, Mr. Miller argued that points for charge should have been included that would have permitted the jury to find that the police were not making a lawful arrest, for the purposes of a resisting arrest charge, if the jury believed the police intended only to cite appellant for the summary offense of disorderly conduct. *Id.* The Superior Court soundly rejected that argument, holding that an arrest was proper under the circumstances, even if Mr. Miller's offense was only summary in degree, and that the loud, obscene, and belligerent conduct of Mr. Miller imposed upon the police an additional obligation to act so as to restore order and preserve the peace and it could be found that Mr. Miller's conduct was intended to prevent the police from discharging that duty. *Id.*

Similarly, in Commonwealth v. Fluck, an officer observed the defendant commit several traffic violations by driving through multiple red lights. No. 2161 EDA 2017, 2018 WL 6322031, at \*1 (Pa. Super. Ct. Dec. 4, 2018). The officer activated his overhead lights and directed Mr. Fluck to pull over, and he complied. *Id.* However, once pulled over, Mr. Fluck exited his vehicle and approached the officer and his partner. *Id.* Fearing for his safety, the officer decided to handcuff Mr. Fluck. *Id.* Mr. Fluck did not comply with instructions to place his hands behind his back and a struggle ensued. *Id.* After his partner warned Mr. Fluck and then employed a taser, the officer was able to place one handcuff on Mr. Fluck, but Mr. Fluck pulled away, got into his car, and drove off. *Id.* Mr. Fluck was detained shortly thereafter by another officer after crashing his vehicle. *Id.* On appeal, Mr. Fluck argued that the Commonwealth failed to provide evidence that the officer was “discharging any other duty” under the resisting arrest statute. *Id.* The Superior Court rejected Mr. Fluck’s argument, holding that when the officer pulled Mr. Fluck over, he was clearly “discharging [his] duty” of issuing a citation to Mr. Fluck for the traffic violations and Mr. Fluck’s subsequent decision to get out of his vehicle, approach the officers, struggle with the officers, and flee in his vehicle, prevented the officer from “discharging [his] duty” of enforcing the Vehicle Code. *Id.* at \*2.

Here, as in both Miller and Fluck, Officer Broyles was attempting to issue a summary citation to Defendant. Defendant first ignored Officer Broyles' directives, then attempted to ride away from the officer. After Officer Broyles was forced to use his vehicle to prevent Defendant's escape, Defendant became belligerent, throwing his bike to the ground and cursing at the officer. Officer Broyles attempted to get the situation under control by detaining Defendant, but Defendant struggled, flailed, and kicked, forcing Officer Broyles to take Defendant first to the hood of his vehicle, where he completed handcuffing him, then to the ground, where Defendant continued to struggle.

When read in the light most favorable to the Commonwealth, the facts in this case are sufficient to support the jury's verdict of guilty with regard to the charge of resisting arrest. Defendant resisted by means justifying and requiring substantial force to overcome the resistance and did so with the intent of preventing Officer Broyles from discharging his duty of enforcing the Vehicle Code and issuing citations for violations thereof.



**CONCLUSION**

For the reasons set forth hereinabove, we respectfully recommend that the instant appeal be denied and that our Order of Sentence dated November 7, 2019, be affirmed accordingly.

**BY THE COURT:**

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**Steven R. Serfass, J.**