THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2018-0184, State of New Hampshire v. Jeffrey Clay, the court on May 2, 2019, issued the following order:

The defendant, Jeffrey Clay, appeals his convictions for disorderly conduct and resisting detention. He argues that the Trial Court (Garner, J.) erred in denying his motion to set aside the verdicts because the State failed to present sufficient evidence that: (1) he disobeyed a lawful order pursuant to RSA 644:2, V(a); and (2) he knew that the arresting officer was trying to detain him and that he physically resisted the officer's attempt. We affirm.

The following summary is taken from the trial court's lengthy narrative order. The defendant attended a meeting of the Alton Board of Selectmen. The board first conducted a public hearing on the issue of "ambulance billing" at which the defendant spoke.

The board then closed the hearing and opened its regular meeting. When the chairperson reached the "Public Input I" item on the meeting agenda, she stated: "This is limited to agenda items only. If you have something on the agenda that you wish to speak to I would invite you to do that now." The defendant approached the table to speak and, after identifying himself for the record, stated: "I think that you folks are without a doubt the most reprehensible incompetent collection of board of selectmen I have ever known." When the chairperson asked whether he wished to speak to an item on the agenda, he continued: ". . . that's saying a lot, because I have known some really bad selectmen before." The chairperson asked the defendant to identify the agenda item that he wished to address and then told him that he had just received his first warning and that, if he did not speak to an agenda item, he would be removed after two more warnings. The board then took a recess. When the board reconvened, the chairperson again warned the defendant that "if you persist to speak about non-agenda items you will be asked to leave the building." The defendant continued to speak without identifying any agenda item; the chair then asked him repeatedly to leave the building because he was "impeding our ability to continue." When the defendant refused, the chairperson requested assistance in removing him from the building as "he is no longer welcome at this meeting." The arresting officer then came to the table and told the defendant three more times that he had been asked to leave the building. When the defendant refused, he was detained and then arrested.

The defendant was subsequently charged with two misdemeanor counts of disorderly conduct and one misdemeanor count of resisting arrest. Following a

trial, the court dismissed one disorderly conduct charge and found him guilty on the other disorderly conduct charge and on the resisting arrest charge.

The defendant first challenges his conviction for disorderly conduct. He argues that the State did not present sufficient evidence that the arresting officer believed that the defendant "had been committing any offense defined by New Hampshire law."

A challenge to the sufficiency of the evidence raises a claim of legal error; our standard of review is therefore de novo. State v. Labrie, 171 N.H. 475, 482 (2018). The defendant bears the burden of demonstrating that the evidence was insufficient to prove guilt. Id. When we review his challenge, we view the evidence presented at trial and all reasonable inferences drawn therefrom in the light most favorable to the State, examining each evidentiary item in the context of all the evidence, not in isolation. Id. We will affirm the conviction unless no rational trier of fact could have found guilt beyond a reasonable doubt. Id.

RSA 644:2 provides, in relevant part, that a person is guilty of disorderly conduct if he "[k]nowingly refuses to comply with a lawful order of a peace officer to move from or remain away from a public place." RSA 644:2, II(e). For the purposes of RSA 644:2, II(e), "lawful order" includes:

> (1) A command issued to any person for the purpose of preventing said person from committing any offense set forth in this section, or in any section of [the Criminal Code or the Motor Vehicle Code], when the officer has reasonable grounds to believe that said person is about to commit any such offense, or when said person is engaged in a course of conduct which makes his commission of such an offense imminent; [or]
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> (2) A command issued to any person to stop him from continuing to commit any offense set forth in this section, or in any section of [the Criminal Code or the Motor Vehicle Code], when the officer has reasonable grounds to believe that said person is presently engaged in conduct which constitutes any such offense.

RSA 644:2, V (2016).

The defendant argues that the trial court erred in failing to apply the statutory definition of "lawful order." The trial court made the following findings: (1) the defendant repeatedly ignored the board's rules that he speak to an agenda item when recognized; instead he focused his remarks on the board's alleged incompetence; (2) the defendant continued to speak over the chairperson about the board's incompetence after she warned him that he would be asked to leave if he did not confine his remarks to an agenda item; (3) after the board took a five-minute recess and the chairperson repeated her warning, the defendant replied:

"I'm not listening to any warnings from you"; and (4) the defendant's "comments during public input and during the recess [made] it appear that his intent had evolved from discussion of any specific agenda item into an effort to confront the Board with invective, either to test their limits or provoke them to take some action under the rules." These findings are supported by the record. The trial court also found that the chairperson's request that the defendant leave the building was "lawful under the Board's authority to enforce the rules of Public Participation." The defendant does not contest this finding.

The arresting officer was present during the public hearing and the ensuing general meeting of the board. He testified that he "made the independent determination that there was probable cause" to arrest the defendant for disorderly conduct based upon his "impeding a meeting, the orderly function of a meeting." See RSA 644:2, III(c) (2016). The factual findings made by the trial court, viewed objectively, support the arresting officer's conclusion. Cf. State v. McBreairty, 142 N.H. 12, 15 (1997) ("reasonableness" test requires viewing circumstances objectively).

Given the record before us, we conclude that the officer had reasonable grounds to believe that the defendant was engaged in conduct constituting an offense under RSA 644:2 at the time that the officer ordered the defendant to leave. Accordingly, that order constituted a "lawful order" as defined in RSA 644:2, II(e).

The defendant also challenges his conviction for resisting arrest, arguing that the State failed to prove that he knew that the arresting officer was trying to detain him and that he physically resisted the officer's attempt. RSA 642:2 (2016) provides: "A person is guilty of a misdemeanor when the person knowingly or purposely physically interferes with a person recognized to be a law enforcement official . . . seeking to effect an arrest or detention of the person or another regardless of whether there is a legal basis for the arrest."

The defendant argues that the trial court "erred by ignoring the de[a]rth of evidence that [the defendant] was subjectively aware that his actions would interfere with [the arresting officer]'s effort to effect his detention." We are not persuaded by this argument.

The trial court's order includes the following description of the events leading to the defendant's arrest: (1) the defendant was asked to step away from the table and leave the building and did not so; (2) the chairperson repeatedly asked him to leave and the defendant refused; (3) the chairperson then announced: "Could I please have some assistance in removing [the defendant] from the building he is no longer welcome at this meeting"; (4) the arresting officer then warned the defendant three times that he had been asked to leave; (5) the arresting officer told the defendant that he was being detained; (6) the arresting officer took hold of the defendant's arm, advised him that he was being

detained, and stated, "You don't want to resist"; and (7) when the arresting officer told him "[s]ubmit to the detention," the defendant responded: "No, I want you to arrest me if that's the case." The video also shows that, during this time, the arresting officer held the defendant's arm as he attempted to remove him from the table. The trial court described the exchange: "During the next several seconds, [the arresting officer] held [the defendant]'s left arm with his left hand and [they] moved back and forth, each appearing to pull from the other." At trial, the defendant conceded that the arresting officer was "pulling [his] arm." Though he also explained that he "was trying to prevent something from -- bad happening," the trial judge was not required to accept this explanation for his physical resistance. See Brooks v. Allen, 168 N.H. 707, 715 (2016) (fact finder must assess credibility of witnesses and may accept or reject such portions of evidence as it deems proper).

Based upon the record before us, we affirm the defendant's conviction for resisting arrest.

Affirmed.

HICKS, BASSETT, and HANTZ MARCONI, JJ., concurred.

Eileen Fox,
Clerk