

IN THE SUPREME COURT
OF THE STATE OF NORTH DAKOTA

State of North Dakota,)	
)	
Plaintiff/Appellee,)	Supreme Court No. 20210026
)	
-vs-)	Burleigh County Case No.
)	08-2020-CR-01398
Amy Lynn Woodruff,)	
)	
Defendant/Appellant)	

**BRIEF OF PLAINTIFF - APPELLEE
STATE OF NORTH DAKOTA**

APPEAL FROM VERDICT OF GUILTY AND CRIMINAL JUDGMENT ENTERED
ON JANUARY 25, 2021

Burleigh County District Court
South Central Judicial District
The Honorable Bobbi Weiler, Presiding

Anna A. Argenti (ND ID 08997)
Assistant State's Attorney
514 E. Thayer Avenue
Bismarck, ND 58501
(701) 222-6672
bc08@nd.gov
Attorney for Plaintiff/Appellee

Dominic Davis
Certified under Rule of Limited
Practice of Law by Law Students

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JURISTICTIONAL STATEMENT

[¶1] The Appellant, Amy Woodruff (hereinafter “Woodruff”), appeals the Criminal Judgment entered on January 22, 2021, after a jury found Woodruff guilty of one count of Preventing Arrest. The North Dakota Supreme Court has jurisdiction to hear such appeal under North Dakota Century Code § 29-28-06(1).

ISSUE PRESENTED FOR REVIEW

[¶2] I. There was sufficient evidence to convict Woodruff of preventing arrest.

STATEMENT OF THE CASE

[¶3] On May 22, 2020, the Burleigh County State’s Attorney’s Office charged Woodruff with one count of Preventing Arrest, a class A misdemeanor, in violation of N.D.C.C. §12.1-08-02(1). *See* Appellant’s Appendix at page 6 (Doc. ID# 1) (hereinafter “Appx.” at p. 6 (Doc. ID. # 1)). Woodruff pled not guilty, and a jury trial was scheduled.

[¶4] On January 22, 2021, a one-day jury trial was held. At trial, the district court denied Woodruff’s Rule 29 Motion for Acquittal twice. Trial Transcript (“Tr.”) page 96: lines 14-24 (“96:14-24”) and Tr. 123:13-19. The jury returned a guilty verdict and Woodruff was convicted. A Criminal Judgment was entered on January 25, 2021. Appx. at p. 8-9 (Doc. ID. # 31). Woodruff was sentenced to one-hundred eighty (180) days of incarceration in the Burleigh Morton Counties Detention Center with all but three (3) days suspended for three hundred sixty (360) days of unsupervised probation; she was given three (3) days credit for time served. *Id.*

[¶5] On January 27, 2021, Woodruff filed a Notice of Appeal. *Id.* at p. 10 (Doc. ID# 32).

STATEMENT OF FACTS

[¶6] On September 30, 2019, Officer Damien Girodat (hereinafter “Girodat”) conducted a traffic stop on Woodruff because the vehicle she drove matched the description of a vehicle involved in a criminal activity. Tr. 36:21-37:5. Officer Brett Nail (hereinafter “Nail”) responded on scene as a backup for Girodat. Tr. 37:8-11.

[¶7] Nail arrived and spoke with Woodruff for a short period of time before dispatch confirmed that Woodruff had a suspended license. Tr. 65:23-25. Nail notified Woodruff that she was under arrest for driving under suspension. Tr. 72:16-22. After Woodruff was notified that she was under arrest, Woodruff kept asking the same questions multiple times and was abrasive towards Nail. Tr. 65:10-16.

[¶8] Nail ordered Woodruff to put out her cigarette and step out of the vehicle. Tr. 73:11-13. After Woodruff refused, Nail grabbed her left wrist and attempted to guide her out of the vehicle. Tr. 73:14-19. Woodruff said “no,” and pulled herself back into the vehicle. Tr. 73:21-22. Because Nail still had his hand on Woodruff’s wrist, she pulled Nail inside her vehicle causing him to lose balance. Tr. 73:21-74:25. Nail applied a straight arm bar takedown to remove Woodruff out of the vehicle, placed her on the grass next to the vehicle, and handcuffed her. Tr. 74:4-8.

LAW AND ARGUMENT

I. There was sufficient evidence to convict Woodruff of preventing arrest.

[¶9] The State presented evidence sufficient to support the jury’s guilty verdict on the count of Preventing Arrest. In determining whether there was evidence sufficient to support a guilty verdict, this Court has stated:

In reviewing challenges to the sufficiency of the evidence, we view the evidence and reasonable inferences in the light most favorable to the verdict. A conviction rests upon insufficient evidence only when no rational fact finder could have found the defendant guilty beyond a reasonable doubt after viewing the evidence in a light most favorable to the prosecution and giving the prosecution the benefit of all inferences reasonably to be drawn in its favor. In reviewing challenges to the sufficiency of the evidence, we do not reweigh the conflicting evidence, nor judge the credibility of witnesses.

State v. Roe, 2014 ND 104, ¶ 21, 846 N.W.2d 707 (quoting State v. Estrada, 2013 ND 79, ¶ 33, 830 N.W.2d 617). Furthermore, “[a] verdict based upon circumstantial evidence carries the same presumption of correctness as other verdicts and will not be disturbed on appeal unless the verdict is unwarranted.” State v. Olson, 290 N.W.2d 664, 670 (N.D. 1980).

[¶10] Under N.D.C.C. § 12.1-08-02(1), “[a] person is guilty of a class A misdemeanor if, with intent to prevent a public servant from effecting an arrest of himself or another for a misdemeanor or infraction, or from discharging any other official duty, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty.” Furthermore, the statute defines “force” as physical action (N.D.C.C. § 12.1-01-04(10)); “act” or “action” as bodily movement, whether voluntary or involuntary (N.D.C.C. § 12.1-01-04(1)); and “bodily injury” as any impairment of physical condition, including physical pain (N.D.C.C. § 12.1-01-04(4)).

[¶11] The jury was provided with the following instructions on Count 1: The State’s burden of proof is satisfied if the evidence shows, beyond a reasonable doubt, the following essential elements:

- 1) On or about September 30, 2019;
- 2) in Burleigh County, North Dakota;
- 3) Defendant, Amy Lynn Woodruff;
- 4) Intended to prevent a public servant from effecting an arrest of the Defendant for a misdemeanor or infraction; and
- 5) Willfully
 - a. created a substantial risk of bodily injury to the public servant or to anyone else; or
 - b. employed means justifying or requiring substantial force to overcome resistance to effecting the arrest.

[¶12] Woodruff does not dispute the facts of the case. Woodruff only contests subsection (b) of element five (5), specifically, the definition of use of “substantial force.” *See* Appellant’s Brief (App’s Brief) at ¶ 12. Woodruff argues that substantial force could not have been used because of the size and strength disparity between Naill and Woodruff. *Id.* Woodruff further argues that just force, not substantial force, would have been required to pull Woodruff from the car and onto the ground. *Id.* Woodruff’s argument is without merit.

[¶13] Whether the force was substantial or not was for a factfinder to determine. In State v. Barth, this Court held, “[u]nder N.D.C.C. § 12.1-01-04(11) the term ‘Force’ is defined to mean ‘physical force.’ The term ‘substantial’ is not defined under our statute, but it defined in Merriam-Webster’s Collegiate On-Line Dictionary, www.m-w.com (2001) to mean ‘not imaginary or illusory ... considerable in quantity; significantly great.’ Barth, 2001 ND 201, ¶18, 637 N.W.2d 369, 375. In State v. Motskso, the Court similarly held that the words “substantial” and “substantially” are words commonly understood and that it was for the jury to decide whether or not the distance and the interference were substantial. Motskso, 261 N.W.2d 860, 865 (N.D. 1977).

[¶14] In this case, the jury found sufficient evidence to support a guilty verdict. Naill testified when he attempted to lead Woodruff out of the vehicle by grabbing her wrist, Woodruff said, “no,” and pulled back strong enough to cause Naill losing his balance and pulled into the vehicle. Tr. 73:17-74:2. Thus, Woodruff verbally and physically indicated that she was not going to follow Naill’s orders. As a result, Naill pulled Woodruff out of the vehicle and placed her on the grass next to the vehicle by conducting a straight arm bar takedown. Tr. 74:4-8.

[¶15] The use of substantial force by a police officer to effectuate the arrest on Woodruff was not something novel or extraordinary. Similarly, in Barth, the defendant was uncooperative and told the officers he would not go with them; when a police officer opened the pickup door and reached for Barth’s arm to escort him out, Barth pulled back, raised his arms, and clinched his fist. To effectuate the arrest, the police officers pepper sprayed Barth, grabbed, and threw him to the ground. Barth, 2001 ND 201, ¶18, 637 N.W.2d 369, 371. The Court held that “[a] refusal to cooperate with arresting officers in a manner that requires officers to physically manipulate arrestee to make arrest can constitute unlawful resisting of arrest.” Id. at 376.

[¶16] In this case, Woodruff was uncooperative and abrasive towards Naill. When Naill attempted to escort Woodruff from the vehicle, she refused verbally and resisted in a similar physical manner by pulling away; therefore, Naill was justified to utilize the straight arm takedown technique and apply significant force to effectuate the arrest.

[¶17] This case is also similar to State v. Washington, where the defendant did not comply with the requests of the officer to exit the vehicle. Washington, 2007 ND 138, ¶ 15, 737 N.W.2d 382. This Court found no constitutional violation when police officers

had to open the door of a vehicle for a defendant who was hiding in the vehicle or attempting to avoid detection; furthermore, the Court held that it was sufficient to convict an individual of preventing arrest. Id. Similarly, in this case, by not complying with Naill's orders both verbally and physically, Woodruff created a situation where Naill had the right to open the door and use force to effectuate the arrest. Consequently, the jury had enough evidence to determine that substantial force was used and correctly found Woodruff guilty of preventing arrest.

[¶18] Woodruff does not contest that under subsection (a) of element five (5) her conduct had created a substantial risk of bodily injury to the public servant or to anyone else. As defined in the Merriam-Webster's Collegiate On-Line Dictionary, www.m-w.com (2021), "or" is a conjunction that is used as a function word to indicate an alternative. In this case, a subsection (b) is an alternative to a subsection (a), the State is not required to prove both of them, one is enough.

[¶19] Thus, even if the jury would find that the force was not substantial, the jury still had the option to look at whether a risk of bodily injury was present towards Naill. Naill testified that he notifies an individual that they are under arrest if it is safe to do so before using forceful measures. Tr. 90:10-15. Naill also testified that when Woodruff pulled her arm into the vehicle, her action subsequently pulled him into the vehicle as well and made him lose his balance. Tr. 73:17-74:8. Based on Naill's testimony, the jury could find that Woodruff's resistance demonstrated a danger to the officer as he could be injured when being yanked into the vehicle and from the subsequent loss of balance. Therefore, even if this Court finds insufficient evidence of significant force on element five (5) subsection

(b), there was enough evidence for a jury to find that the State met its burden on element 5 (five) subsection (a).

CONCLUSION

[¶20] The State provided sufficient evidence to fully prove all and every element of the crime. The trial court did not err in denying Woodruff's motions for acquittal because the evidence was sufficient to support the conviction. Woodruff's request to reverse her conviction should be denied.

RESPECTFULLY SUBMITTED:

Dated this 29th day of June, 2021.

/s/ Anna Argenti
Anna A. Argenti (ND ID 08997)
Assistant State's Attorney
Burleigh County Courthouse
514 E Thayer Ave.
Bismarck, ND 58501
(701) 222-6672
bc08@nd.gov
Attorney for Plaintiff-Appellee

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CERTIFICATE OF COMPLIANCE

[¶ 1] COMES NOW Anna A. Argenti of Bismarck, North Dakota, and hereby certifies that the attached Brief of the Appellee is in compliance with Rule 32(a)(8)(A), North Dakota Rules of Appellate Procedure.

[¶ 2] The number of pages in the principal Brief, excluding any addenda, is ten (10) pages, according to the page count of the filed electronic document.

Dated this 28th day of June, 2021.

/s/ Anna Argenti
Anna A. Argenti (ND ID 08997)
Assistant State's Attorney
Burleigh County Courthouse
514 E Thayer Ave.
Bismarck, ND 58501
(701) 222-6672
bc08@nd.gov
Attorney for Plaintiff-Appellee

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)	
Defendant/Appellant.)	
.....)	
)	
STATE OF NORTH DAKOTA)	
) ss	
COUNTY OF BURLEIGH)	

[[1] I, Stacey Baskerville, being first duly sworn, depose and say that I am a United States citizen over 21 years old, and on the 28th day of June, 2021, I served the following:

1. Brief of Plaintiff – Appellee
2. Certificate of Compliance
3. Consent to Appearance Under Limited Practice Rule
4. Certificate of Service

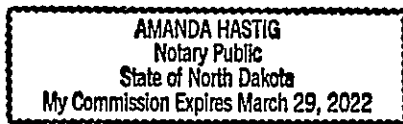
by electronic transmission to the following email address below:

Kiara Costa Kraus-Parr
Attorney for Defendant/Appellant
424 Demers Ave.
Grand Forks, ND 58201
Email: service@kpmwlaw.com

which is the last known reasonable ascertainable email address of the addressee.

Stacey Baskerville
Stacey Baskerville

Subscribed and sworn to before me this 28th day of June, 2021.



Amanda Hastig
Amanda Hastig, Notary Public,
Burleigh County, North Dakota.

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 Anna A. Argenti (ND ID 08997)
 Assistant State's Attorney
 Burleigh County Courthouse
 514 E Thayer Ave.
 Bismarck, ND 58501
 (701) 222-6672
 bc08@nd.gov
 Attorney for Plaintiff-Appellee

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which is the last known reasonable ascertainable email address of the addressee.

Stacey Baskerville
Stacey Baskerville

Subscribed and sworn to before me this 29th day of June, 2021.

<p>AMANDA HASTIG Notary Public State of North Dakota My Commission Expires March 29, 2022</p>

Amanda Hastig
Amanda Hastig, Notary Public,
Burleigh County, North Dakota.