

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 933

September Term, 2017

DOMINIQUE BROOKS

v.

STATE OF MARYLAND

Woodward, C.J.,
Friedman,
Kenney, James A. III,
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: April 9, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Dominique Brooks was convicted by a jury in the Circuit Court for Baltimore City of resisting arrest and disorderly conduct. On appeal, Brooks contends that the evidence was insufficient to sustain the convictions. We affirm.

The evidence at trial showed that, in the early morning hours of January 31, 2017, a man who appeared to be drunk entered Massey’s Pizza on North Eutaw Street and urinated on the floor behind an ATM machine. Harinderpal Singh, an employee of Massey’s, went out to the street and reported the incident to Officer Ryan Davies and Officer Patrick Baur, who were on uniformed patrol in a marked police vehicle. Singh pointed to Brooks, who had left the pizzeria and was walking away, and identified him as the perpetrator.

The officers activated their body cameras, exited their patrol vehicle and approached Brooks. The officers asked Brooks to stop, so that they could question him. When Brooks did not stop, the officers blocked his path, and began to question him about urinating in the store.

Brooks denied urinating in the store and became agitated and aggressive. Officer Baur told Brooks that if he didn’t stop yelling, he was going to “get locked up for disorderly.” Officer Baur asked Brooks if he had any weapons on him, and Brooks responded that he had a box cutter. Officer Davies called for backup because a crowd of five people had formed and the “scene wasn’t secure.” The officers placed Brooks in handcuffs “for security reasons” and attempted to place Brooks in the patrol car “to secure him” while they investigated the complaint. Brooks refused to get into the patrol vehicle, so he was seated on the curb, where he continued to loudly proclaim his innocence.

Officer Davies went into Massey’s Pizza and spoke to Singh, who provided details of the incident and showed the officer a “puddle of urine” on the floor. Brooks was told he was under arrest, but he refused to get into the police transport van. He resisted the officers’ efforts to push him into the van by “counteract[ing] and throw[ing] his weight forward.” Brooks was “screaming” that he was “not getting in” the transport van so loudly that he could be heard “blocks away.” People in the crowd either “encouraged” Brooks’s behavior or shouted at him to “chill out.” Some people in the crowd yelled at the police. After a “brief struggle,” four to five officers were able to get Brooks into the van.

Brooks was transported to the police station where he “continued to resist efforts” to secure him to a bench in the station. He refused to unclasp his hands so that police could put “flex cuffs” on him and kicked at the officers. Video from police body cameras, showing the encounter outside Massey’s and the events at the police station, was shown to the jury.

“The test of appellate review of evidentiary sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Donati v. State*, 215 Md. App. 686, 718 (citations and internal quotation marks omitted). “[T]he test is ‘not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder.’” *Benton v. State*, 224 Md. App. 612, 629 (2015) (citation omitted). In reviewing the sufficiency of the evidence, “[w]e ‘must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [we] would have chosen a different reasonable inference.’”

Donati, 215 Md. App. at 718 (citation omitted). We do not consider evidence tending to support the defense theory of the case, as exculpatory inferences are not part of the version of the evidence most favorable to the State. *Cerrato-Molina v. State*, 223 Md. App. 329, 351, *cert. denied*, 445 Md. 5 (2015).

Resisting Arrest

Brooks was charged with a violation of Md. Code (2002, 2012 Repl. Vol), Criminal Law Article (CR), § 9-408, which provides that a person may not intentionally resist a lawful arrest. “[I]n order for a defendant to be found guilty of resisting arrest, the State must prove: (1) that a law enforcement officer arrested or attempted to arrest the defendant; (2) that the officer had probable cause to believe that the defendant had committed a crime, *i.e.*, that the arrest was lawful; and (3) that the defendant refused to submit to the arrest and resists by force or threat of force.” *Olson v. State*, 208 Md. App. 309, 330 (2012).

Brooks claims that the evidence was insufficient to convict him of resisting arrest because he “was not under arrest and accordingly, his conduct outside Massey’s could not have constituted resisting arrest.” The record does not support this contention. Although Brooks was initially detained for investigation of the complaint of public urination, it is clear that police had probable cause to arrest Brooks for that offense, that Brooks was placed under arrest, and that Brooks resisted efforts of law enforcement officers to arrest him.¹

¹ In addition to disorderly conduct and resisting arrest, Brooks was charged with a violation of Baltimore City Health Code, § 5-503, which prohibits urinating in a public place. A violation of that provision is a criminal misdemeanor, and is subject to a penalty of a fine and/or imprisonment of up to 30 days. The jury acquitted Brooks of that charge.

Brooks argues, alternatively, that even if he was under arrest, “the State failed to prove that [he] used the amount of force necessary to constitute the crime of resisting arrest.” We disagree. As we have stated, “the level of force required [] is not high.” *DeGrange v. State*, 221 Md. App. 415, 421 (2015). See also *Rich v. State*, 205 Md. App. 227, 253, n.8 (2012) (observing that courts have held that “go[ing] limp” in response to an officer’s attempt to effectuate an arrest . . . constitutes force for resistance purposes”). We are satisfied that the officers’ testimony, coupled with the footage from the officers’ body cameras, which shows the struggle between Brooks and the police during the arrest, was sufficient to persuade the jury that Brooks resisted arrest “by force.”

Disorderly conduct

Brooks next contends that the evidence was insufficient to convict him of disorderly conduct because “the record was devoid of any evidence that [he] disturbed or provoked resentment of anyone nearby.” We disagree.

Brooks was charged with a violation of CR § 10-201, which in pertinent part, provides that “[a] person may not willfully act in a disorderly manner that disturbs the public peace[.]” CR § 10-201(c)(2). As we have explained, “[t]he ‘gist of the crime of disorderly conduct . . . is the doing, or saying, or both, of that which offends, disturbs, incites, or tends to incite, a number of people gathered in the same area.’” *In re Lavar D.*, 189 Md. App. 526, 592 (2009) (citation omitted). We conclude that the evidence at trial was sufficient to persuade the jury that Brooks’s language and actions created a disturbance to the public peace by drawing and inciting a crowd of people who were in the area.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**