

3. The order to submit to arrest was not lawful because appellant was not trespassing---the only stated basis for the arrest---and thus she was entitled to offer proportionate resistance to the arrest under the common law of Oklahoma;
4. The order to submit to arrest was unlawful under the First Amendment as well as the common law of Oklahoma; and
5. Appellant cooperated in her arrest, as the arresting officer admitted.

The judgments and sentences are **REVERSED WITH INSTRUCTIONS TO DISMISS**. Because we find merit in Bell's claims of insufficiency of the evidence, it is unnecessary to address her First Amendment claims.

On September 21, 2014, Bell went to the Oklahoma City Civic Center, in Oklahoma City, Oklahoma, to engage in a public demonstration in the form of prayer against the Satanic Black Mass being conducted inside the building. The Black Mass was the only event being held at the Civic Center at that time. There was limited access to the event, with ticket-holders being admitted through only one door. The remaining doors were not available for use that day. Bell was arrested and charged with trespassing when she refused to cease kneeling and praying the rosary on the landing at the top of the Civic Center steps. There were no police lines or barricades barring entry to the Civic Center steps or landing although there were barricades on the sidewalks. Although she remained on the landing at the top of the steps for a couple of hours, Bell was only asked to leave the premises after she knelt to pray the rosary. The arrest occurred after Civic

Center Performing Arts Manager James Brown signed a trespassing complaint.¹ Brown admitted at trial that Bell was on public property at the time of the arrest. Bell was also initially charged with interference with official process, a charge requiring the arrestee issue a threat against the arresting officer. The arresting officer admitted that Bell made no threats and the charge was amended to Failure to Obey a Lawful Command as specified in Oklahoma City Municipal Ordinance § 30-68(a).²

The City called several witnesses at trial, including Brown. Mr. Brown signed the complaint against Bell, testifying that staff told him that Bell was blocking “ingress and egress of the building.” Brown also testified that he saw Bell “blocking that space at the top of the stairs”. He admitted that there was one controlled entrance for Black Mass ticket holders and that no other doors were

¹ The original complaint alleged Bell was trespassing on private property, which all parties admit was incorrect. The complaint was subsequently amended, charging Bell with disorderly conduct as specified in Oklahoma City Municipal Ordinance § 30-81(e). The ordinance reads, in relevant part, as follows:

§ 30-81. – Disorderly conduct.

A person is guilty of disorderly conduct, a Class “a” offense, when such person:

...(e) intentionally obstructs, impedes or in any way inhibits access to an *entrance* to a public building or pedestrian on the right-of-way;...

² This ordinance reads, in relevant part, as follows:

§ 30-68. – Interfering or obstructing by disobeying a lawful command;...

(a) Any person who interferes, obstructs, attempts to obstruct, or disobeys a lawful command of any police officer in the discharge of his/her duties, by any means other than by threat, intimidation, or force is guilty of a Class “a” offense.

open. Brown did not testify that he witnessed Bell blocking any of the Civic Center doors.

Several Oklahoma City Police officers were working the event and five of those officers testified at trial. The officers all testified that Bell was not blocking any of the entrances to the Civic Center, and that they observed no one enter or exit the door near where she was arrested during the time she was kneeling on the landing. None of the officers observed anyone who was prevented from entering or leaving the Civic Center as a result of Bell's actions, and at least one of the officers testified that it was her impression that all of the doors on the side of the Civic Center where Bell was arrested were locked, except for the lone ticket-holder door. Lieutenant Dennis Buckley testified that the door Bell was near when she was arrested is actually an exit door that leads to a stairwell, and that no one would have been entering that door. Buckley was manning the lone entry door for ticket holders and testified that he did not remember Bell kneeling in front of or otherwise blocking that entry, nor did he recall her preventing anyone else from entering the door. After Buckley advised Bell that she had to move from in front of the ticket-holder door unless she had a ticket to the event. Bell complied and moved to another location on the landing where she was ultimately arrested.

Officer Jared Hurst actually took Bell into custody after she was issued the trespassing citation. Bell was told several times that if she did not move from the premises she would be arrested. He testified that Bell was on her knees in a

praying position when he handcuffed her, and that Bell refused to stand when instructed. Bell went limp when the officers tried to arrest her. Officer Hurst and Officer Jordan Crump lifted Bell off of the ground and escorted her down the stairs to Hurst's patrol car. Bell walked slowly to the squad car, and cooperated as she was placed in the squad car, but Hurst testified without further explanation that Bell "wasn't doing what we needed her to do." Bell was then taken to the Oklahoma County jail where she had to be assisted out of the squad car and taken into the facility in a wheelchair.

Bell, a resident of Plainfield, New Jersey, testified that she came to Oklahoma City to pray against the Black Mass which she alleges is a hate crime against the Catholic Church. She and a friend were at the Civic Center trying to get tickets to the event when she approached the door for entry. When Bell was told she would not be allowed in without a ticket, she moved away from the entry door. Bell testified that she was on the landing area for several hours along with many other people and never blocked the entry door. During this time, she walked around a lot, and stood with other people near the entrance. The last time she requested permission to enter, Bell was told that the event had already started and no more tickets were being issued, so she was not going to be allowed in, at which point she yelled out "Jesus loves you and I love you."

Bell was again told to get away from the entry door, so she stepped back and went to the side where there was no door, kneeling down to pray in a location she knew to be public property. Bell testified that she never stood, blocked, knelt

or lay down in front of the door designated for entry into the event. She said she stayed on the side of that entry. Bell stated that she went limp when police tried to arrest her and that she had a right to do so in protest because her civil rights were being violated. She also testified that the police officers did not talk to her while she was at the entry door and never approached her until she knelt down to pray, when she was at the side of the entry door where there were windows, but no entry.

When the officers approached Bell, they told her that she was trespassing and would have to leave. She responded that she was not trespassing and refused to leave. Bell testified that she was not engaged in any type of protest with any of the other people at the Civic Center that day; she was praying the rosary alone, on public property, and was unaware that praying on public property was a crime. She denied disobeying the commands of the officers. Bell admitted that she has attended similar protests on hundreds of occasions and has been arrested numerous times at these events, but she did not come to Oklahoma City intending to be arrested.

Bell stated that during the entire time she was on the Civic Center landing, no one ever came out of or entered the door near where she knelt, and that at various times during the day numerous people were standing near or in front of that particular door. She was aware, she said, that she could be arrested if she blocked the doorway, and so purposely refrained from blocking it.

Judge Tolson acknowledged that trial testimony established that the door in question was not an entrance, but found that Bell intentionally blocked an entrance and failed to cooperate with officers upon being arrested.

The standard of review to be used in examining a claim of sufficiency of the evidence is whether “any rational trier of fact viewing the evidence in the light most favorable to the State could have found the essential elements of the crime charged beyond a reasonable doubt.” *Taylor v. State*, 2011 OK CR 8, ¶ 12, 248 P.3d 362; *Easlick v. State*, 2004 OK CR 21, ¶ 15, 90 P.3d 556, 559; *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-204. When a case is tried by the court, and there is evidence reasonably tending to support the trial court’s findings, those findings will not be disturbed on appeal. *Monroe v. State*, 1987 OK CR 279, ¶ 6, 748 P.2d 519, 520; *Fox v. State*, 1976 OK CR 307, ¶ 16, 556 P.2d 1281, 1284. In the presence of conflicting evidence, this court will not interfere with a fact finder’s determination if there is competent evidence to support the verdict. *Gilson v. State*, 2000 OK CR 14, ¶ 77, 8 P.3d 883, 910.

The ordinance in question prohibits a person from intentionally obstructing, impeding or in any way inhibiting access to an *entrance* to a public building or pedestrian on the right of way. The City’s claim is that Bell was blocking access to a door at the Civic Center. Conceding that the door in question is not an entrance, the City points out that the ordinance does not define the term “entrance”. Arguing that this Court should interpret the statute to determine legislative intent, the City acknowledges that the statute’s plain language is to be applied unless it is

demonstrably at odds with that intent³. The City concludes it would be absurd to prohibit obstruction of an entrance while allowing obstruction of an exit, urging that the proper meaning of the term “entrance” should be construed as “any portal intended to provide ingress or egress to or from a public building”.

As this Court noted in *Leftwich v. State*, 2015 OK CR 5, ¶ 15, 350 P.3d 149, “[T]he fundamental rule of statutory construction is to ascertain and give effect to the intention of the Legislature as expressed in the statute.” *Soto v. State*, 2014 OK CR 2, ¶ 7, 326 P.3d 526, 527. When construing criminal statutes, we follow the rule of strict construction. *State v. Tran*, 2007 OK CR39, ¶ 8, 172 P.3d 199, 200. We will not, in order to justify prosecution of a person for an offense, enlarge a statute beyond the fair meaning of its language or what its terms justify. *Id.* We construe any criminal statute strictly against the State and liberally in favor of the accused. *Id.*; *Fenimore v. State*, 2003 OK CR 20, ¶ 5, 78 P.3d 549, 551. We give statutory language its plain and ordinary meaning. *King v. State*, 2008 OK CR 13, ¶ 7, 182 P.3d 842, 844; *Tran*, 2007 OK CR 39, ¶ 10, 172 P.3d at 200-01; 25 O.S.2011, § 1. Whether we think the City’s ordinance should have been made more comprehensive to include exit doors or not, the ordinance in this instance clearly does not include doors used only as exits.

A review of the photographic exhibits in this case clearly shows a doorway with no outer handle in the vicinity where Bell was arrested. Because there is no

³ Citing *Samman v. Multiple Injury Trust Fund*, 2001 OK 71, 33 P.3d 302, 307; *Villines v. Szczepanski*, 2005 OK 63, 122 P.3d 466, 470; and *Duncan v. Oklahoma Dept. of Corrections*, 2004 OK 58, 95 P.3d 1076, 1079.

way to access that particular doorway from the outside, it is apparent that this doorway is not an "entrance" to the Civic Center. Testimony from Lieutenant Buckley established, and the City concedes, that this particular door is not an entrance as that term is commonly defined. To that extent, it is impossible to find that Bell violated the ordinance prohibiting her from intentionally obstructing, impeding or in any way inhibiting access to an entrance to a public building.

Even if this Court accepted the City's premise and included the term "entrance" to include exit doors, we still find the evidence insufficient to support Bell's conviction for this offense. The testimony established that there was only one entrance available for persons attending the Black Mass event and at no time did Bell block, obstruct or otherwise inhibit access to that entrance. More importantly, the photographic exhibits, that all witnesses agreed accurately depicted Bell's location at the time of her arrest, clearly show her kneeling in front of a window located to the side of the exit door. We fail to see how this constitutes obstruction of the doorway, regardless of how this Court defines "entrance". The City has failed to show that Bell obstructed access to the Civic Center, and we find there was insufficient evidence to support the charged offense.

With regard to the charge of interfering or obstructing by disobeying a lawful command, the City argues that Bell's conduct was unrelated to her arrest, and that her conduct after the arrest warranted her conviction on this charge. We disagree. Her conduct was solely related to her arrest for trespassing. Testimony at trial established that Bell was told she would be arrested for trespassing if she did not

leave. Her testimony was that she knew she was on public property, and was not trespassing, therefore the order given to her by police was not lawful. In response to the order to stand up, Bell went limp and had to be raised to her feet by Officers Hurst and Crump. Officer Hurst testified that Bell had to be raised to her feet, but eventually walked to the squad car and cooperated upon being placed in the vehicle. The charging information alleged that Bell "refused instructions from Officer Hurst to rise/walk/support her own weight, forcing officers to carry Defendant to and from Officer Hurst's squad car."

As a general rule, one may reasonably resist an unlawful arrest. *State v. Nelson*, 2015 OK CR 10, ¶ 28, 356 P.3d 1113, *Sandersfield v. State*, 1977 OK CR 242, ¶ 11, 568 P.2d 313, 315. The right to resist an illegal arrest is a common law right providing that "[i]f the officer had no right to arrest, the other party might resist the illegal attempt to arrest him, using no more force than was absolutely necessary to repel the assault constituting the attempt to arrest." *Bad Elk v. United States*, 177 U.S. 529, 535, 20 S. Ct. 729, 731, 44 L. Ed. 874 (1900). The right to resist an unlawful arrest is thus limited and varies with the circumstances. *Sandersfield*, 1977 OK CR 242, ¶ 11, 568 P.2d at 315. *See also Hayes v. State*, 1977 OK CR 220, ¶ 3, 566 P.2d 1174, 1175 ("In Oklahoma, under some circumstances, a person may reasonably resist an unlawful arrest."). The circumstances in the instant case involve an unlawful arrest for trespassing, which the City acknowledges was not supported by any factual or legal basis.

There is no claim here that Bell fought with police, forcibly resisted their efforts to arrest her or otherwise engaged in any combative behavior in refusing to obey their instruction to stand up from her kneeling position. Officer Hurst testified that Bell went limp as he handcuffed her, and that he and Officer Crump lifted her up underneath her arms to remove her from the premises. Bell then slowly walked to the squad car and cooperated when placed in the vehicle. Once at the jail, Hurst gave Bell the option to stand and walk, but she would not. Three detention officers came out of the jail and tried to get Bell to stand up, but she would not. The officers assisted her out of the squad car and Bell was deposited on the ground when she refused to support her weight. Eventually she was taken into the jail in a wheelchair. Hurst testified that he did not tell Bell anything after he transported her to the jail, testifying that "once we were at the jail, it was their [jail detention officers] deal." Bell reasonably resisted officers during an unlawful arrest for the City's unsupported trespassing charge. The conviction for interfering or obstructing by disobeying a lawful command is **REVERSED** with instructions to **DISMISS**.

DECISION

Appellant's misdemeanor convictions in Oklahoma City Municipal Court Case Nos. 12-8726410 and 12-872642X are **REVERSED** with instructions to **DISMISS**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2016), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE MUNICIPAL COURT OF OKLAHOMA CITY
THE HONORABLE STEVEN L. TOLSON, MUNICIPAL JUDGE

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OPINION BY: JOHNSON, J.

SMITH, P.J.: Concur
LUMPKIN, V.P.J.: Concur in Part and Dissent in Part
LEWIS, J.: Concur
HUDSON, J.: Specially Concur

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LUMPKIN, VICE PRESIDING JUDGE: CONCURRING IN PART/DISSENTING IN PART

I concur in the Court's decision to reverse Appellant's conviction for Disorderly Conduct but dissent to the reversal of her conviction for Interfering or Obstructing by Disobeying a Lawful Command.

Although Bell's initial arrest for trespassing was unlawful she had a duty under both the municipal code and state law to willfully submit to the arrest. The Oklahoma Legislature has implicitly, if not explicitly, supplanted the common law right to resist an unlawful arrest through the enactment of statutes which impose a duty to willfully submit to arrest. *State v. Nelson*, 2015 OK CR 10, ¶¶ 2-3, 356 P.3d 1113, 1124, *citing* 21 O.S.2011, § 268 and § 540 (Lumpkin, V.P.J., and Smith, P.J., concurring in results). Section 268 prohibits the use of force or violence to knowingly resist arrest. Section 540 prohibits delaying or obstructing any public officer in the discharge of his or her duty. Oklahoma City Municipal Code § 30-68 makes provision for criminal liability for "[a]ny person who interferes, obstructs, attempts to obstruct, or disobeys a lawful command of any police officer in the discharge of his/her duties, by any means other than by threat, intimidation, or force." Bell violated this duty when she interfered or obstructed the officers' attempt to arrest her by refusing to stand, going limp, and later refusing to walk into the Oklahoma County Jail.

Instead of interfering, obstructing and delaying the officers, Bell should have simply utilized one of the remedies that modern society has developed as

an alternate to the common law right to resist arrest, e.g., administrative complaint against the officers or civil action for false arrest. *See Overall v. State ex rel. Dep't of Pub. Safety*, 1995 OK CIV APP 107, 910 P.2d 1087, 1091. As the evidence establishes that Bell violated Oklahoma City Municipal Code § 30-68, I would affirm her conviction for Interfering or Obstructing by Disobeying a Lawful Command.

HUDSON, J., SPECIALLY CONCURS

I fully concur in today's decision but write separately to emphasize the limited nature of the common law right to resist an unlawful arrest discussed in this case. For over 100 years, this Court has recognized the right of an individual to resist an unlawful arrest. See, e.g., *State v. Nelson*, 2015 OK CR 10, ¶ 28, 356 P.3d 1113, 1121; *Trent v. State*, 1989 OK CR 36, ¶ 7, 777 P.2d 401, 403; *Sandersfield v. State*, 1977 OK CR 242, ¶ 11, 568 P.2d 313, 315; *Walters v. State*, 1965 OK CR 77, ¶ 20, 403 P.2d 267, 275; *Davis v. State*, 1932 OK CR 126, 53 Okl.Cr. 411, 418, 12 P.2d 555, 557 (citing cases); *Robison v. United States*, 1910 OK CR 201, 4 Okl.Cr. 336, 341-42, 111 P. 984, 985-86. However, our decisions have severely circumscribed this right due to the potentially volatile nature of citizen-police encounters in this context and the complicated nature of police work itself. See *Nelson*, 2015 OK CR 10, ¶¶ 28-33, 356 P.3d at 1121-23 (declining to extend the right to resist an unlawful arrest to illegal traffic stops because of the lesser intrusion on personal liberty arising from these short-lived roadside encounters which amount to mere investigatory detentions and the potential increase for violence such a rule would create); *Ajeani v. State*, 1980 OK CR 29, ¶ 4, 610 P.2d 820, 822-23 (holding there is no right to resist unlawful arrest where an officer has probable cause at the time to believe that a public offense is being committed in his presence by the arrestee even though the arrestee is subsequently found innocent of the charges); *id.* (“[t]he recurring concern . . . is that law enforcement officers not be hampered in the performance of their duties . . . or be subjected to physical

resistance later sanctioned by law, due to an honest, reasonable mistake[.]”); *Sandersfield*, 1977 OK CR 242, ¶ 11, 568 P.2d at 315 (“the right to resist an unlawful arrest is limited and varies with the circumstances.”); *Potter v. State*, 1973 OK CR 140, ¶ 16, 507 P.2d 1282, 1285 (an individual is not justified in the use of a deadly weapon in resisting an unlawful arrest if the person sought to be arrested is aware of the official character of the officer and has no reason to apprehend any treatment other than detention); *Davis*, 1932 OK CR 126, 53 Okl.Cr. at 418, 12 P.2d at 557 (same); *Billings v. State*, 1917 OK CR 173, 14 Okl.Cr. 12, 17, 166 P. 904, 906 (“If an attempted arrest be unlawful, the party sought to be arrested may use such reasonable force, proportioned to the injury attempted upon him, as is necessary to effect his escape, but no more; and he cannot do this by using, or offering to use, a deadly weapon, if he has no reason to apprehend a greater injury than a mere unlawful arrest.”).

These decisions appropriately limit the availability of the right to resist an unlawful arrest and control our decision in the present case. The unique circumstances presented here—particularly the benign nature of Appellant’s resistance and the exceptionally groundless nature of her arrest—supports the conclusion that Appellant lawfully exercised the right to resist her unlawful arrest for trespassing. To hold otherwise would be akin to requiring Appellant to assist with her unlawful arrest.

Judge Lumpkin concludes that the common law right to resist unlawful arrest has been displaced by Oklahoma statutes outlawing the use of force or violence to knowingly resist arrest, 21 O.S.2011, § 268, and obstructing a

public officer in the discharge of his or her official duty. 21 O.S.2011, § 540. These statutes, however, have been in force for as long as our cases have recognized the right itself. Yet, the Legislature has done nothing for over 100 years to foreclose its application. The following discussion shows why.

Our recognition in limited circumstances of the right to resist unlawful arrest is not inconsistent with §§ 268 and 540 because these statutes are premised on the conduct of *lawful* police activities. See 11 O.S.2011, § 34-101(A). This fact is at the core of our recognition of the right to resist an unlawful arrest. See, e.g., *Taylor*, 1989 OK CR 36, ¶ 7, 777 P.2d at 403 (recognizing an individual's right to resist an unlawful arrest for a misdemeanor not committed in the officer's presence but upholding Resisting Executive Officer charge under § 268 because the arrest leading to said charge itself was legal). Recognition of the right to resist an unlawful arrest is thus wholly consistent with the Legislature's pronouncement that "[t]he common law, as modified by constitutional and statutory law, judicial decisions and the condition and wants of the people, shall remain in force in aid of the general statutes of Oklahoma[.]" 12 O.S.2011, § 2.

The common law right to resist an unlawful arrest has an impressive lineage. It can be traced to the Magna Carta in 1215 and was judicially established in 1666 in the Hopkin Huggett's case. *Nelson*, 2015 OK CR 10, ¶ 28 n.3, 356 P.3d at 1121 n.3. The rationale behind this rule explains its survival as a feature of Oklahoma law for so many years. The rule itself is premised on the preservation of individual liberty as guaranteed by the

Oklahoma Constitution—a source whose supremacy cannot be denied. Okla. Const. art. 2, § 2 (“All persons have the inherent right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of their own industry.”). As explained in *Brown v. City of Oklahoma City*, 1986 OK CIV APP 1, 721 P.2d 1346, *aff’d in part, rev’d on other grounds*, 1986 OK 31, 721 P.2d 1356:

But the alternative of denying the right, it seems to us, would create the potential for greater mischief—a license for unrestrained wielding of arbitrary power eventually degenerating into gestapo and KGB-type terrorism—in short a police state. Moreover, it would require forsaking the individual’s inherent right to liberty guaranteed in our state constitution. [Okla. Const. art. 2, § 2]. Of course, there may exist some rare situation where a legitimate government interest may override the individual’s right. The principle we embrace, however, is one that reaches a rational compromise between such competing interests—one that does not exalt unlawful police authority over individual rights.

Id., 1986 OK CIV APP 1, ¶ 18, 721 P.2d at 1352 (footnote omitted).

To summarize, the right to resist an unlawful arrest still exists, we have severely circumscribed its availability and we have declined to extend it to other contexts like traffic stops which involve far less intrusion on personal liberty. See *Nelson*, 2015 OK CR 10, ¶¶ 28-33, 356 P.3d at 1121-23. For the reasons discussed both in the majority opinion and in this special writing, I concur in reversing Appellant’s misdemeanor convictions with instructions to dismiss.