

STATE OF MAINE  
SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT

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DOCKET NO. ARO-23-352

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**STATE OF MAINE,**  
APPELLEE  
V.  
**CHRISTINE DESROSIERS,**  
APPELLANT

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ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET

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**BRIEF OF  
APPELLANT CHRISTINE DESROSIERS**

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## INTRODUCTION

Passive resistance to an arrest is not unlawful in Maine. As originally proposed, 17A M. R. S. §751-B would have made flight or other passive resistance a crime. That language was removed by amendment, however, specifically to allow for non-violent resistance. Here Appellant was convicted of resisting arrest for crossing her arms and falling to the ground.

This court has never weighed in on the use of force requirement in §751-B, Every week people are charged with resisting arrest for running away, refusing to exit a car or, as here, going limp. Reversing the conviction here would not only do justice in this case, but be very useful education for police officers and prosecutors. It would also reduce jail time spent awaiting trial, the length of plea-bargained sentences, and the need for indigent counsel.

Appellant was also wrongly convicted of operating a motor vehicle which “has never been registered by the current owner”. This case gives the Court the opportunity to clarify that Maine law specifies that a transfer of ownership of a motor vehicle does not occur until the title is transferred. Arrests based on a misunderstanding of this are much rarer, but the evidence here shows how traumatic they can be.

If both these convictions are reversed, the conviction for violating a condition of release falls also.

### STATEMENT OF FACTS

On May 19, 2023, Officer Kyle White of the Presque Isle police department spotted a Chevrolet Trailblazer that did not display a vehicle inspection sticker. He activated his blue lights and followed the Trailblazer into the parking lot of the Sav-A-Lot grocery store in Presque Isle. (Transcript at pp. 49-50) He requested license, registration and proof of insurance from the operator, which were not immediately produced. The officer identified the operator as Christine Desrosiers (T. at pp. 52-53). The officer determined that the vehicle was registered to Derek Richards (T. at p. 59), valid until May 31, 2023 (T. at p. 62). The officer decided to arrest Desrosiers, and she pulled away. When she was handcuffed by multiple officers, she dropped to the ground (T. at p. 63). Once confined in the police cruiser, Desrosiers experienced a psychotic episode (State's Exhibit 1 at file #23PI04392).

By complaint dated May 22, 2023, Desrosiers was charged with Refusing to Submit to Arrest [17-A M. R. S. §751-B (1) (B)], Operating an Unregistered Vehicle [29-A M. R. S. §351 (1) (E)], and Violation of Condition of Release [15 M. R. S. §1092 (1) (A)]. (Appendix at p. 13-14)

Pre-trial proceedings were uneventful, and a jury trial was held on September 8, 2023. Over defense objection (T. at pp. 65-64) the court admitted the video of Desrosier's post-arrest episode in the "cage" and denied the Motion for Judgment of Acquittal under M. R. U. Crim P. 29 (T. at pp.107-108) made on the grounds that there was no evidence of any force used against an officer.

Desrosiers and her mother testified that they were in the process of buying the vehicle, but on May 19 were using it with permission of the owner (T. at pp. 130, 141). They didn't get the title, which is required for registration, until mid-June (T. at p. 131).

The jury returned verdicts of guilty on all counts, and the trial court denied a post-verdict Motion for Acquittal under Rule 29. (Appendix @ p. 17) A timely Notice of Appeal was filed.

## ISSUES PRESENTED FOR REVIEW

- 1) Was the evidence sufficient to support a finding of the use of physical force against an officer beyond a reasonable doubt?
- 2) Did the trial judge abuse his discretion in admitting video evidence of the defendant's post-arrest tantrum in the police cruiser?
- 3) Was the evidence sufficient to support a finding that the defendant operated a vehicle that "has never been registered by the current owner"?

## ARGUMENT

### I. THE EVIDENCE WAS INSUFFICIENT TO PROVE THE USE OF PHYSICAL FORCE AGAINST A POLICE OFFICER BEYOND A REASONABLE DOUBT.

The standard of review is whether the evidence, viewed in the light most favorable to the State, was sufficient to prove guilt beyond a reasonable doubt.

State v. Lowe. 2015 ME 124, ¶ 27, 124 A. 3d 156.

Here Count 1 of the complaint charged refusing to submit to arrest, 17-A M. R. S. § 751-B (1) (B). That statute reads as follows:

#### **§ 751-B. Refusing to submit to arrest or detention**

1. A person is guilty of refusing to submit to arrest or detention if, with the intent to hinder, delay or prevent a law enforcement officer from effecting the arrest or detention of that person, the person:
  - A. Refuses to stop on request or signal of a law enforcement officer. Violation of this paragraph is a Class E crime;
  - B. Uses physical force against the law enforcement officer. Violation of this paragraph is a Class D crime; or



C. Creates a substantial risk of bodily injury to the law enforcement officer. Violation of this paragraph is a Class D crime.

A close reading of the transcript shows NO evidence of the use of force against an officer. There is evidence that the defendant pulled away (Transcript at p. 63) and, after being handcuffed, dropped to the ground. (Id.) The officer's body camera recording was admitted into evidence, and it also shows no use of force. Under cross-examination the officer confirmed the description of the defendant's behavior that he used in his report: "passively resisting". When questioned further on re-direct the officer repeated that the defendant was uncooperative, but when asked what force she used replied "gravity" (Tr. at p. 79). Quite simply, gravity is a force exerted by the mass of the planet we live on, not by Christine Desrosiers.

Detective Seeley's description was the same (Tr. at pp. 86-87). On cross he confirmed the account in his report that the defendant was "passively resisting". Warden Seeley said, "she was kind of limp" (Tr. at p. 100). The defense witnesses, of course, agree that no physical force was used (Tr. at pp. 128, 131, 142).

The State and, unfortunately, the trial court assumed that evidence of *any* resistance, no matter how passive, was sufficient for conviction. This is not Maine law, but might have been. As originally proposed, L.D. 633, Laws 2009 c. 449 §2,

now codified as 17-A M. R. S. §751-B, included a subsection making any interference or resistance to arrest, including flight, a Class E crime. The original proposal read as follows<sup>1</sup>:

[Copy included as next page.]

1. The legislative history of the bill can be found at

<https://lldc.mainelegislature.org/Open/Meta/LegHist/124/lh124-LD-0633.pdf>

1 Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 17-A MRSA §751-A, as amended by PL 2001, c. 128, §1, is repealed.

3 Sec. 2. 17-A MRSA §751-B is enacted to read:

4 **§751-B. Refusing to submit to arrest or detention**

5 1. A person is guilty of refusing to submit to arrest or detention if, with the intent to  
6 hinder, delay or prevent a law enforcement officer from effecting the arrest or detention  
7 of that person or any other person, the person:

8 A. Performs any act of physical interference or resistance, including flight.  
9 Violation of this paragraph is a Class E crime;

10 B. Uses physical force against the law enforcement officer. Violation of this  
11 paragraph is a Class D crime; or

12 C. Creates a substantial risk of bodily injury to the law enforcement officer,  
13 including but not limited to fleeing or attempting to flee on foot, or otherwise evading  
14 the law enforcement officer, resulting in the law enforcement officer's pursuing,  
15 chasing or attempting to pursue or chase the person on foot or other means. Violation  
16 of this paragraph is a Class D crime.

17 2. It is a defense to prosecution under this section that the person reasonably believed  
18 that the person attempting to effect the arrest or detention was not a law enforcement  
19 officer.

20 **SUMMARY**

21 Under current law, it is a Class D crime to refuse to submit to an arrest or detention if  
22 that person uses physical force against a law enforcement officer or creates a substantial  
23 risk of bodily injury to a law enforcement officer. This bill repeals that provision of law  
24 and enacts in its stead a provision that establishes that refusal to submit to arrest:

25 1. Is a Class E crime if the person performs an act of physical interference or  
26 resistance;

27 2. Is a Class D crime if the person uses physical force against the law enforcement  
28 officer; and

29 3. Is a Class D crime if the person creates a substantial risk of bodily injury to the law  
30 enforcement officer, resulting in the law enforcement officer's pursuing, chasing or  
31 attempting to pursue or chase the person.

This did not become law. L.D. 633 was an attempt to amend former 17-A §751-A, which did not criminalize passive resistance. In its memo dated March 17, 2009, the Criminal Law Advisory Commission advised against the change. After opining that flight, without more, should not constitute a crime, the committee addressed passive resistance:

“CLAC members engaged in more discussion with respect to the proposed language that “performing any act of physical interference or resistance” would constitute resisting arrest. The issue is best illustrated by the example of a non-violent protester in a government building who, when arrested for trespass, must be carried from the building. On the one hand, this passive resistance creates the risk of injury to law enforcement personnel who must carry the person to the transport vehicle. On the other hand, civil liberty concerns arise should such passive resistance be made a crime in and of itself. This is a balance for the Legislature to strike.” (Appendix at p. 19)

The legislative record also contains a letter dated March 23, 2009 to the Committee on Criminal Justice and Public Safety from District Attorney Geoffrey Rushlau, which reads in relevant part:

“Two aspects of the bill may suggest a legislative response. As the CLAC testimony points out, the bill could criminalize conduct which consists only

of passive response to arrest. The CLAC testimony notes that the Legislature could decide this conduct creates such a risk of harm to arresting officers that it should be criminalized. My question is whether the citizens of Maine, who sit as jurors, would agree that passive resistance, a classic element of civil disobedience, is criminal behavior.” (Appendix at p. 20-21)

There was undoubtedly other input, in committee hearings and otherwise, and the end result was the bill being amended to *remove* flight and physical interference or resistance as criminal conduct. The legislative intent could not be clearer: passive resistance, as in the example of the protester being carried from a building used by the CLAC, remains lawful. The evidence here, *as described by the police officers*, showed only passive resistance. The conviction on Count 1 should be vacated and the matter remanded for entry of Judgment of Acquittal.

## II. THE COURT ERRED IN ADMITTING VIDEO EVIDENCE OF THE DEFENDANT’S CONDUCT IN “THE CAGE”.

The standard of review of a ruling on relevancy is abuse of discretion. State v. Gagnon 383 A. 2d. 25 (ME. 1978).

The defendant was extremely agitated following her unlawful arrest. She testified that she suffers from post-traumatic stress disorder caused by sexual abuse by men in uniform. Whatever the cause, the episode of screaming and head-

banging is very hard to watch. It is also completely irrelevant to the crimes charged. The driving and arrest had been fully completed. It is only the use of force against an officer that is relevant. The statute could say “against an officer or his vehicle” but it does not. Had she been charged with disorderly conduct or, assuming damage, criminal mischief, it would have been relevant. As to the offenses charged, it was not.

In admitting the video over counsel’s relevance objection, the trial court said that it was relevant to intent. How, exactly? Any opportunity to use force against an officer during an arrest had passed, as the arrest had been completed. The only intent evident from the footage is the intent to express outrage at her groundless arrest. (As set out below, the vehicle was in fact registered to the legal owner.) The non-existence of relevance is matched by the obviousness of the prejudice to the defendant. Anyone seeing that who was trying to be objective would have their heart hardened against her.

### III. THE EVIDENCE WAS INSUFFICIENT TO PROVE THAT THE VEHICLE “HAD NEVER BEEN REGISTERED BY THE CURRENT OWNER”.

The standard of review is whether the evidence, viewed in the light most favorable to the State, was sufficient to prove guilt beyond a reasonable doubt. State v. Lowe, 2015 ME 124, ¶ 27, 124 A. 3d 156.

Count 2 of the complaint charged operating an unregistered vehicle, 29-A M. R. S. §351 (1) (E). That statute reads in part as follows:

1. Failure to register. A person who operates a vehicle that is not registered in accordance with this Title, fails to register a vehicle or permits a vehicle that is not registered to remain on a public way commits:

\* \* \*

E. A Class E crime if the vehicle has never been registered by the current owner of the vehicle.

The evidence at trial showed that the vehicle driven by the defendant on May 19, 2023 was registered to Derek Richards (Transcript at p. 59). The defendant and her mother were in the process of buying it. They started paying on it in late 2002, and took possession of it in April, 2023. (T. at p. 140). The registered owner was deceased, so the transaction was with his widow, who gave them permission to use the vehicle. (T. at p. 141). They didn't receive the title until mid-June, 2023.

In her initial interaction with Officer White, the defendant said that they had "bought" the car, which was only true in the sense that people will excitedly tell you that they "bought a house" when they've signed a purchase and sale

agreement. They won't own the house until the closing is completed, a month or two later.

Maine law is *very specific* about when ownership of a motor vehicle changes. 29-A M. R. S. §663 provides that ownership passes to the surviving spouse of a married resident owner, but 29-A §662 (4) defines *when* that transfer is effective:

“4. Transfer effective. Except as provided in section 664-A” [resale by dealer] “and between the parties, a transfer by an owner is not effective until the provisions of this section and section 665” [involuntary transfers] “have been fulfilled and the required fees have been paid. An owner who has delivered possession of the vehicle and has complied with this section and section 665 is not liable thereafter as owner for damages resulting from operation of the vehicle.”

The “provisions of this section” required for a transfer of ownership to occur, as relevant here, are 1) execution of the assignment of title on the existing certificate of title, 2) with the current odometer reading, and 3) delivery of the certificate of title to the transferee or the Secretary of State [29-A M. R. S. §662 (1)]. Section 663 is explicit that these formalities also apply to a transfer to a surviving spouse.



The most logical inference from the evidence at trial is that the title was never transferred from Derek Richards to his widow, Joanne Richards. The only evidence in the record on the issue is at Tr. p. 131, where the defendant testified that Mrs. Richards was having trouble finding the title and delivered it in *June* “when she finally found ‘em”. This supports an inference that the title had been tucked away and forgotten since the vehicle was purchased by Derek Richards, as is the usual practice. If the title *had* been transferred to Mrs. Richards, it would have been a relatively recent event, and the title would have been close at hand.

However, the task at hand is not to speculate on what may have happened, but rather to search the record for evidence that the title *was* transferred to Mrs. Richards, or to anyone. There is *none*. *Zip, zilch, nada, rien*. There is unchallenged evidence that the vehicle was registered to Derek Richards, with plates good until the end of May. The vehicle *was* in fact registered to the current owner as defined by Maine law. Ownership had never passed to the surviving spouse because the title had never been transferred as required by 29-A §662 (4). (It is interesting that there is no time limit in the statute for that transfer. Presumably, if the vehicle is retained by a spouse, it is done when re-registration is due.)

The defendant and her mother could not have registered the vehicle, as neither of them were the owner. Under Maine law, the transfer of ownership from Derek Richards was not effective until the title was transferred, which never

happened. On May 19, 2023, the defendant was legally driving a vehicle that was registered to the current owner.

The conviction on Count 2 should be vacated and the matter remanded for entry of judgment of acquittal.

#### IV. REVERSAL OF THE CONVICTIONS ON COUNTS 1 AND 2 REQUIRES THE REVERSAL OF THE CONVICTION ON COUNT 3.

Count 3 charged violation of the bail condition that the defendant commit no new criminal conduct. There is no evidence of criminal conduct in the record except as relevant to Counts 1 and 2. If those convictions are vacated, the conviction on Count 3 should be vacated and the matter remanded for entry of judgment of acquittal on Count 3.

## CONCLUSION

There being *no* evidence of force used against an officer, and *no* evidence of a legal transfer of ownership of the vehicle out of the registered owner, the matter should be remanded for entry of judgment of acquittal on Counts 1, 2 and 3.

February \_\_, 2024

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## CERTIFICATE OF SERVICE

I hereby certify that on February \_\_, 2024, two copies this Brief of Appellant were served on Kari Wells-Puckett, Esq., attorney for the Appellee State of Maine by first-class mail addressed to her at the Aroostook County District Attorney's Office, 144 Sweden Street, Caribou, Maine 04736.

February \_\_, 2024

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Mark A. Perry, Esq.