

January 8, 2002

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Re: *State of Delaware v. Mary Ellen Ramos*
Case No.: 0109021150
Final Order and Opinion

Dear Counsel:

This is the Court's Final Order and Opinion in the above-referenced matter. Trial took place on January 3, 2002. Following the receipt of evidence and testimony, the Court reserved decision.

The defendant was charged with five (5) misdemeanors counts including Assault Third Degree, 11 Del. C. § 611; Disorderly Conduct, 11 Del. C. § 1301; Conspiracy Third Degree, 11 Del. C. § 511; Resisting Arrest, 11 Del. C. § 1257; and Hindering Prosecution, 11 Del. C. § 1244. All offenses were allegedly committed on September 3, 2001 in the County of New Castle, State of Delaware, involving Wilmington Patrolman Thomas Ragonese, as plead individually in each Information.

The reasons which follow, the Court adjudicates Mary Ellen Ramos ("the defendant") guilty of Resisting Arrest and Assault Third Degree. The Court adjudicates the defendant not guilty of the remaining three (3) charges.

The Facts

At trial the parties presented the following relevant facts. Officer Thomas Ragonese, a Wilmington Police Officer, was on uniform patrol on September 30, 2001 at 1:00 a.m. in the City of Wilmington and

encountered the defendant. The defendant was present at 1814 West Fourth Street in the City of Wilmington, New Castle County, State of Delaware. A professional sporting event had just taken place on television with Felix Trinidad and uniformed patrol officers in the area were on alert. A large crowd on the porch assembled at 1814 West Fourth Street where the defendant was present and two (2) Lieutenants, two (2) Sergeants, and two (2) uniformed Police Officers were in front of the house at that residence for the purposes of ceasing and desisting the crowd from any further disorderly conduct. When the police arrived, they saw one person cursing, screaming and shouting obscenities at the Wilmington Police Officers in question. That person was identified at trial as the defendant's father, Jose Ramos. There was also other people in the street in the area of the vicinity who had allegedly were acting disorderly and congregating as a crowd in an unruly manner. There was also loud aggressive conduct towards the police officers.

At some point, Officer Ragonese tried to effect an arrest of Mr. Ramos and entered the front porch of 1814 West Fourth Street. The defendant intervened and "got in between the officer" and her father and subsequently scratched Ragonese on the face.

Photographs were moved into evidence without objection by the State as "A" and "B" showing the scratches on Ragonese's face. Ragonese told the defendant to "give up your hands and stop resisting." Later the defendant was stunned by a cap gun to stop her resisting. Ragonese had made it through the front enclosed porch and entered the front portion of the residence when the altercation occurred. Ragonese saw the defendant come out him and scratch him while he was wrestling with her on the ground. Defendant allegedly told Officer Ragonese, "You can't come into our house like this and f--- you." Defendant was also aggressive towards the other officers in general. The photographs moved into evidence depicts scratches down the front of the face of Ragonese. At one point Ragonese told another officer, "Arrest her, she is the one that scratched me" right after the incident.

On cross-examination at trial, Ragonese stated the defendant's father yelled profanities and obscenities at all of the officers. Ragonese believed the father's First Amendment rights were exceeded when the obscenities started to escalate towards the police officers.

Patrolman Michael James Groark also presented testimony at trial. He is a Wilmington Police Officer and arrested the defendant. Groark saw the scratches on Ragonese's face. Groark grabbed the defendant on the couch and eventually after defendant was flailing her arms and kicking her feet, he stunned her so she could be arrested.

The defense presented its case in chief. Mildred Valentine presented testimony at trial. She is a friend of the defendants and resides at 1605 West Fifth Street. She was in the defendant's house inside, not on the porch, and did not observe much of the incident with defendant's father. She testified that Ragonese stated that "That's the b---- that scratched me, arrest her!" Valentine could not see much of the disorderly conduct out on the porch or in the street because she was inside the residence.

The defendant was sworn and testified. She is now seven (7) months pregnant. Her testimony supported the facts that the police came in and asked, "What's going on?" Defendant admits that they were celebrating and very loud and her father was drunk and cursing in Spanish. The defendant testified she turned around and fell on top of her father when the police officer arrested her and believes she scratched the officer by accident. Her testimony was that Officer Groark was actually nice to her, even though he arrested her.

Discussion

The State has the burden of proving each element of the above offenses beyond a reasonable doubt. 11 Del. C. § 301; *State v. Matushefske*, Del. Supr., 215 A.2d 443 (1965). The State also has a burden and has proven beyond a reasonable doubt both jurisdiction and venue. 11 Del. C. § 232; *James v. State*, Del. Supr., 377 A.2d 15 (1977).

This case deals with the Court's determination of the credibility of all fact witnesses. If the Court finds the evidence presented to be in conflict, it is the Court's duty to reconcile these conflicts, if reasonable possible, so as to make one harmonious story of it all. If the Court cannot reconcile these conflicts, the Court must give credit to the portion of the testimony which, in the Court's judgment, is most worthy of credit and disregard any portion of the testimony which in the Court's judgment is unworthy of credit. In performing this task, the Court takes

into consideration the demeanor of each fact witness, their apparent fairness in giving their testimony, their opportunities in knowing the facts about which they have testified and any basis or interest they may have concerning the nature of the case.

Opinion and Order

The State waived its opening and closing statements. The defendant argued in his closing that no formal complaint had been filed with the Wilmington Police and there was some antagonizing by the arresting officers that cause the incident with the defendant. The defense argues that no warrant was issued and that the defendant was merely “celebrating a boxing event” and that the officers “rushed to judgment.” Since the State waived both its opening and closing statements, the Court must reconcile these conflicts and testimony in the record to determine whether the State has met its statutory burden. 11 Del. C. § 301.

The evidence supports the conclusion beyond a reasonable doubt that Ragonese was scratched by the defendant and the defendant did so intentionally as defined by the Delaware Code. Clearly, the scratches to Ragonese’s face by the defendant constitutes physical injury as impairment of physical condition and/or substantial pain. 11 Del. C. § 222(21). 11 Del. C. § 231(a)(1) and (2); 11 Del. C. § 301. With regards to the Resisting Arrest charge, the Court finds the State has met its statutory burden in proving 11 Del. C. § 1257 in that the defendant intentionally attempted to prevent Officer Groark of the Wilmington Police Department from effecting an arrest by struggling with her arms and flailing legs when the arrest was made. 11 Del. C. § 231; 11 Del. C. § 301. Officer Groark actually had to stun gun the defendant in order to arrest her. As to the balance of the charges the State has not met its burden and therefore the Court adjudicates the defendant NOT GUILTY of these charges.

With regards to the Assault Third and Resisting Arrest charges, the Court requests a Presentence Investigation for purposes of determining any restitution owed to the State for the injury inflicted by

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the defendant on Officer Ragonese. Once the presentence report is filed with this Court, the Court shall set the matter for sentencing with Notice to counsel of record.

IT IS SO ORDERED this 8th day of January, 2002.

JOHN K. WELCH
ASSOCIATE JUDGE

JKW/vh
attachment

cc: John Jaremchuk, Presentence Office (w/attachment)