



LEGAL UPDATE

RESISTING ARREST

Commonwealth v. Manolo, M., Mass. (July 8, 2025).

RELEVANT FACTS:

On October 3, 2019, officers were dispatched to a fight and a large crowd of students disrupting traffic on Florence Street after Brockton High School had been dismissed at 11 AM. Upon arrival at Florence Street, officers saw approximately 100 students in the street blocking traffic. Attempts to disperse the crowd using lights, sirens and the public address system were unsuccessful.

As one officer was physically struggling with a student, another officer stood between them and the crowd. Manolo tried to run past the officer to get to that struggle. He ignored multiple commands to stay back and then charged at the officer who was blocking his way. Manolo also tried to punch the officer. Manolo approached the officer again and both he and the officer fell to the ground. While on the ground, Manolo was told he was under arrest; however, he did not comply with orders to put his hands behind his back. Instead, he continued to physically struggle with the officer. Another officer went over and assisted by grabbing Manolo's arm so that handcuffs could be applied.

Angela recorded officers with her cell phone as they attempted to arrest some of the students. She held the phone within inches of officers' faces while screaming and swearing that the officers were violating people's rights. She was told multiple times to "get the camera out of my face" and, when she refused, the phone was knocked out of her hand three times. Angela was ultimately told she was under arrest. When Angela was told to put her hands behind her back, she pulled away from the officer and yanked her arm from the officer's grasp. She was put on the ground and then she pulled her hands underneath her body and refused to put them behind her back despite several requests for her to do so. She continued to physically struggle with the officer until she was sprayed with pepper spray and officers were able to place her under arrest.

For specific guidance on the application of this case or any law, please consult your supervisor or your department's legal advisor.

Angela and Manolo were charged with multiple offenses, including resisting arrest. They were adjudicated delinquent after trial and appealed.

DISCUSSION

The juveniles first argued that officers had no good faith basis to arrest them because their actions were protected by the First Amendment. The Appeals Court decision rendered in 2023 (covered during the 2024 in-service Legal Updates class) confirmed that criticizing the police, swearing, and yelling are typically actions that are protected by the First Amendment. Recording police in the performance of their official duties in a public place, when done from a safe distance and in a way that does not interfere with the officer's performance of those duties is also protected by the First Amendment. The Appeals Court also concluded that the actions of the juveniles in this case went beyond First Amendment protected activities and that officers had a good faith basis to arrest each of the juveniles for disorderly conduct. The SJC agreed.

The juveniles next argued that their actions did not meet the elements of resisting arrest. The crime of resisting arrest is not self-explanatory. A generic statement that the defendant was "resisting" will not be enough. Likewise, merely being uncooperative or simply stiffening one's arms during an arrest will not suffice.

Resisting arrest, under M.G.L. c. 268 § 32B, has four elements:

1. The defendant prevented or attempted to prevent a police officer from making an arrest;
2. The defendant did so by using or threatening to use physical force or violence against the officer or another **OR** by using any other means that create a substantial risk of causing bodily injury to the officer or another;
3. The defendant did so knowingly;
4. The officer was acting under color of official authority in the sense that the officer was called on to make, and did make, a judgment to arrest in good faith, based on the surrounding facts and circumstances.

To resist arrest under the statute, an individual must commit either of two types of conduct:

1. They must use or threaten to use physical force or violence against the officer or another **OR**
2. They must use any other means that create a substantial risk of causing bodily injury to the officer or another.

If the actions of a defendant fail to meet at least one of these two types of conduct, the Commonwealth cannot satisfy its burden of proof as to the second element.

The Commonwealth's theory with respect to Angela was that her actions met the statutory definition of using or threatening the use of physical force or violence against the officer or another. The court recognized that the term "pulling away" itself may not satisfy the statute as it could describe the act of simply moving away as opposed to using physical force. However, Angela's conduct went beyond just pulling her arms away from officers. The court concluded that the actions of Angela as described above were sufficient to meet the "use of physical force" element.

When addressing the resisting arrest charge against Manolo, the court was careful to distinguish between the conduct that occurred before and the conduct that occurred after he was told he was under arrest. This is important because conduct that occurred before the arrest cannot be the factual basis for the resisting arrest charge.

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Manolo was not arrested until he and the officer were on the ground. Therefore, the conduct that occurred before that point in time cannot satisfy the elements of resisting arrest. However, the jury was not required to ignore the physically aggressive acts Manolo took against the officer prior to his arrest. While only actions after he was told he was under arrest can be used to meet the elements of resisting arrest, the pre-arrest conduct can be used to put the post-arrest conduct in context.

The Commonwealth also argued that it was reasonable to infer physical force when another officer assists the original officer in making an arrest. The court refused to adopt such a bright-line rule.

“Innumerable circumstances may prompt a second officer to assist a colleague, even where a defendant does not engage in the means of resisting arrest prohibited by M.G.L. c. 268, § 32B.”

The court found that the evidence of resisting arrest against Manolo was a close question.

“In light of this conduct by Manolo immediately leading up to his arrest, the jury reasonably could infer from the testimony describing the arrest -- that [the officer] was having an altercation with Manolo on the ground in which [the officer] was trying to get Manolo to comply with commands to place his hands behind his back, prompting a second officer to run to assist by grabbing Manolo's arm -- that Manolo was using physical force against [the officer] to resist [the officer's] efforts to handcuff him.” (internal quotations omitted.)

The judgments were affirmed.