Did Dobbs Resist Arrest?

Dobbs v. State, *434 S.W.3d 166 (Ct. Crim. App. Tex. 2014)*

Atha Albert Dobbs, appellant, challenges the sufficiency of the evidence to sustain his conviction for resisting arrest with a deadly weapon. Tex. Penal Code § 38.03(a),(d).

In September 2010, appellant was living with his wife, Dawn, and her two daughters in Washington County when one of the daughters told Dawn that appellant had been sexually abusing her for several years. Dawn and her daughters moved out of the house the following day. Dawn contacted the police to report her daughter's allegations, and a warrant was issued for appellant's arrest.

Because Dawn had indicated to police that appellant might resist arrest or attempt to harm himself, five sheriff's deputies were dispatched to his house to carry out the warrant. Appellant saw the deputies approach the house through the kitchen window, and he retrieved a loaded pistol out of his gun cabinet. The deputies surrounded the house and could see inside through the windows. Two of the deputies went to the back of the house, two to the side, and one officer, Deputy Kokemoor, approached the front door. From his position, Kokemoor could see appellant walking toward the door with a gun in his hand. One officer shouted to the others that appellant was holding a gun. The officers drew their weapons, and Kokemoor ordered appellant to put down the gun. Appellant did not comply. Instead, he pointed the gun at his own temple. Although Kokemoor could not hear what appellant was saying, it appeared to him that appellant was repeatedly mouthing the words, "I'm going to kill myself."

Appellant then turned around and retreated deeper into the house. Kokemoor, believing that appellant was suicidal and not a threat to the officers, lowered his gun, pulled out his [T]aser, and entered the house. Upon realizing that Kokemoor had entered, appellant began to run into the living room, where the deputy shot him with the [T]aser. Appellant then fell to the floor, pinning one hand beneath himself while his other hand was still holding the gun. When appellant did not comply with Kokemoor's instruction to put his hands behind his back, the deputy tased appellant a second time and then kicked the gun out of appellant's hand. Appellant was arrested and transported to jail.

Appellant was charged with continuous sexual abuse of a young child, aggravated sexual assault, and resisting arrest. The resisting-arrest offense was elevated from a misdemeanor to a third-degree felony because the State alleged that appellant had used a deadly weapon during commission of the offense. At trial, the jury was unable to reach a unanimous verdict on the continuous-sexual-abuse and aggravated-sexual-assault offenses.

However, the jury did find appellant guilty of resisting arrest with a deadly weapon, and it sentenced him to six years in prison and assessed an $8,000 fine.

The complete statutory elements of the offense of resisting arrest are that a person:

(1) "intentionally prevents or obstructs"

(2) "a person he knows is a peace officer or a person acting in a peace officer's presence and at his direction"

(3) "from effecting an arrest, search, or transportation of the actor or another"

(4) "by using force against the peace officer or another."

The offense is elevated from a Class A misdemeanor to a third-degree felony if "the actor uses a deadly weapon to resist the arrest or search." Applying these principles to the facts of this case, we conclude that the evidence is insufficient to sustain appellant's resisting-arrest conviction. Here, the record indicates that appellant at all times either held the gun at his side or pointed it at himself, and never at officers or anyone else. The record is devoid of any evidence to indicate that appellant threatened to use any kind of force against the officers, but instead shows that he threatened only to shoot himself. Kokemoor indicated in his testimony that he did not feel threatened by appellant at any point, and no evidence in the record suggests that appellant directed any threat to or against Kokemoor or any of the other officers.

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