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THE SUPREME COURT OF NEW HAMPSHIRE

Rockingham
Case No. 2023-0562
Citation: State v. Wells, 2026 N.H. 8

THE STATE OF NEW HAMPSHIRE

v.

JOSHUA WELLS

Argued: September 16, 2025
Opinion Issued: March 3, 2026

John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Robert L. Baldridge, assistant attorney general, on the memorandum of law and orally), for the State.

Wadleigh, Starr & Peters, P.L.L.C., of Manchester (Donna J. Brown and Michael G. Eaton on the brief, and Michael G. Eaton orally), for the defendant.

COUNTWAY, J.

[¶1] The defendant, Joshua Wells, appeals his convictions following a jury trial in Superior Court (St. Hilaire, J.) on one misdemeanor count of simple assault, see RSA 631:2-a, I(a) (2016), and one misdemeanor count of resisting arrest, see RSA 642:2 (2016). The defendant argues that the evidence was insufficient to support his convictions. We affirm.

[¶2] The jury could have found the following facts. The defendant was one of three passengers in a vehicle that was pulled over for speeding by a Salem police officer. When the officer reached the vehicle, he noticed a “very strong odor of an alcoholic beverage coming from inside the vehicle.” When the officer requested each passenger’s identification and that the passengers roll down the backseat window, the defendant, who was seated in the backseat, started yelling and cursing at the officer. The defendant continued to yell and interrupt the officer while the officer attempted to speak with the driver. Eventually, the officer ordered the defendant out of the vehicle. After stepping out of the vehicle, the defendant turned toward the officer while yelling at him. The defendant “aggressively” stepped toward the officer, pointing at him, and then “shoved his finger into [the officer’s] chest.” The officer told the defendant he was under arrest and grabbed his wrist to place him under arrest. The defendant “pulled away” and then turned toward the officer, causing the officer to lift him and bring him to the ground. While the defendant was on the ground, the officer handcuffed him with the assistance of another officer (the backup officer) who had arrived on scene to assist. Another passenger in the vehicle captured part of the altercation on video.

[¶3] The defendant was subsequently charged with resisting arrest and simple assault. At trial, the jury was shown the video of the altercation and heard testimony from the officers who were at the scene. At the close of evidence, the trial court denied the defendant’s motions to dismiss the resisting arrest and simple assault charges. The jury convicted the defendant on both counts, and this appeal followed.

[¶4] On appeal, the defendant argues that the evidence was insufficient to support his convictions. Following oral argument, we ordered supplemental briefing “addressing the applicable standard of review when this court views the same video evidence that was presented to the jury.” The defendant argues that we should adopt a de novo standard of review for such evidence. The State counters that we should apply our traditional standard of review that considers all of the evidence in the light most favorable to the State to determine whether a rational jury could have found guilt beyond a reasonable doubt. See State v. Seibel, 174 N.H. 440, 445 (2021). For the reasons that follow, we agree with the State and conclude that video evidence presented to the jury is no different than other evidence, such as photographs or audio recordings, and must be reviewed on appeal under the familiar standard that calls on us to view all of the evidence and all reasonable inferences drawn therefrom in the light most favorable to the State and then determine whether a rational jury could have found guilt beyond a reasonable doubt. See id.

[¶5] In arguing for a de novo standard, the defendant maintains that, in reviewing video evidence that was presented to the jury, we are “in the same position as the trial court and the jury” to consider such evidence. He contends that “there is no dispute about the accuracy of the video,” and

suggests that “when, as here, credibility determinations are not required in order to review, consider, and draw inferences from the video evidence,” factual findings by a trial court or jury should be accorded less deference on appeal. Cf. Hillside Assocs. of Hollis v. Maine Bonding & Cas. Co., 135 N.H. 325, 330 (1992) (holding in civil case that, because case was submitted on record and all the documents that the trial court relied upon in reaching its decision were “available for our perusal,” the trial court “was in no better position to decide the case” than is this court and “less than ordinary deference” should thus be given on appellate review). We disagree.

[¶6] Even if we assume that the defendant is correct that the accuracy of the video is not in dispute, the video evidence was not the only evidence presented to the jury: It also heard live testimony from witnesses who were at the scene describing what is both shown and not shown on the video. The jury, as the finder of fact, was in a better position than this court to view the video evidence in the context of the witnesses’ testimony. See State v. King, 151 N.H. 59, 64 (2004) (“Because the jury observes and evaluates the testimony of the witnesses, it is generally in a better position than this court to determine the facts and to assess the credibility of witnesses.”). The Supreme Court of Arizona underlined this principle when considering the standard of review applicable to a trial court’s factual findings involving video evidence:

The trial court remains uniquely situated to evaluate video evidence in context. For example, after hearing testimony explaining what a video depicts, the trial court is in a superior position to resolve disputes about perspective, timing, or events occurring beyond the scope of the video, to assess witness credibility and demeanor, and to integrate those findings with any other evidence presented. The appellate court’s role is to review whether the trial court’s findings are reasonably supported by the record, not to reweigh the credibility or effect of visual evidence itself.

State v. Alvarez-Soto, 579 P.3d 1227, 1234 (Ariz. 2025). We find this rationale persuasive as to video evidence viewed by juries. Moreover, although the defendant argues that no credibility determinations were necessary in viewing the video, we cannot separate the totality of the evidence considered by the jury — including witness credibility — in reaching its verdict. See State v. Gubitosi, 152 N.H. 673, 682 (2005) (stating that jury “observes the witnesses, judges their credibility and hears their testimony, accepting or rejecting it in whole or in part” and that “[g]enerally . . . the path a jury follows to a verdict and the evidence it considers while deliberating are not subject to the court’s control” (quotations omitted)).

[¶7] In arguing for a de novo standard, the defendant points to cases in which we gave less than ordinary deference to a trial court’s findings based

solely on documentary evidence, which he suggests lend support to a de novo review of the video evidence here. See Masse v. Commercial Union Ins. Co., 136 N.H. 628, 631-32 (1993); Hillside Assocs. of Hollis, 135 N.H. at 330. We have clarified, however, that this less stringent standard of review “applies only when all the evidence presented to the trial court is documentary.” Rye Beach Country Club v. Town of Rye, 143 N.H. 122, 127-28 (1998) (emphasis added). Thus, even if video evidence were analogous to documentary evidence, we would not apply a de novo standard of review when the jury considered both live testimony and video evidence. Cf. id.; State v. Haley, 141 N.H. 541, 546 (1997) (declining to review de novo trial court’s evidentiary ruling because ruling was based in part on documents not contained in appeal record). For these reasons, we decline to accept the defendant’s invitation to adopt a separate standard of review with respect to video evidence viewed by the jury.

[¶8] Having determined the applicable standard for review of the video evidence, we now consider the defendant’s arguments that the evidence was insufficient to support his convictions. A challenge to the sufficiency of the evidence raises a question of law, which we review de novo. Seibel, 174 N.H. at 445. When considering such challenges, we objectively review the entire record to determine whether any rational trier of fact could have found guilt beyond a reasonable doubt, considering the evidence, and all reasonable inferences drawn therefrom, in the light most favorable to the State. Id. We examine each item of evidence in the context of the entire case, and not in isolation. Id.

[¶9] A defendant’s intent often must be proved by circumstantial evidence and may be inferred from the defendant’s conduct under all the circumstances. State v. Vincelette, 172 N.H. 350, 354 (2019). When the evidence as to an element of proof is solely circumstantial, it must exclude all reasonable conclusions except guilt. Id. The proper analysis is not whether the evidence excludes every possible conclusion consistent with innocence, but whether it has excluded all reasonable conclusions other than guilt. Seibel, 174 N.H. at 445. We do not determine whether the defendant has suggested another possible hypothesis that could explain the events in an exculpatory fashion. Id. Rather, we evaluate the evidence in the light most favorable to the State and determine whether the alternative hypothesis is sufficiently reasonable that a rational trier of fact could not have found proof of guilt beyond a reasonable doubt. Id. Where solely circumstantial evidence is at issue, the critical question is whether, assuming all credibility resolutions in favor of the State, the inferential chain of circumstances is of sufficient strength that guilt is the sole rational conclusion. Id.

[¶10] We first address the defendant’s argument that the evidence was insufficient to support his conviction for misdemeanor simple assault under RSA 631:2-a, I(a). To convict the defendant, the State had to prove that the defendant “[p]urposely or knowingly cause[d] bodily injury or unprivileged physical contact to another.” RSA 631:2-a, I(a); State v. Cunningham, 159

N.H. 103, 107 (2009). “Unprivileged physical contact,” in this context, “includes all physical contact not justified by law or consent.” State v. Burke, 153 N.H. 361, 364 (2006).

[¶11] We conclude that there was sufficient evidence for a rational jury to find that the defendant committed a simple assault. The officer testified that the defendant called him a “bitch cop” and warned that he had “better not disrespect [the defendant].” The officer then ordered the defendant out of the vehicle. The defendant stepped out of the vehicle and “immediately turned back towards” the officer and continued yelling at him. The defendant “squared up,” “balled his right fist,” and “aggressively” stepped toward and pointed at the officer. The officer testified that the defendant “shoved his finger into [the officer’s] chest and shoved it.” Based on this evidence, a rational jury could reasonably conclude that the defendant caused unprivileged physical contact with the officer and that he did so purposely or knowingly. See RSA 631:2-a, I(a).

[¶12] The defendant offers alternative explanations and interpretations of the evidence that he contends would provide a rational jury with bases to acquit. We are not persuaded by these arguments. First, the defendant suggests that the evidence failed to establish that he made physical contact with the officer. He argues that the officer’s testimony regarding the assault was uncorroborated and points out that the officer initially omitted the assault from his recitation of the encounter until prompted by the prosecutor. It is well settled, however, that the jury has substantial latitude in determining the credibility of witnesses. Gubitosi, 152 N.H. at 680. Even if the officer’s testimony regarding the contact was not corroborated by other evidence — and considering other possible explanations for why the contact might have occurred — the jury was entitled to credit this testimony. See id. at 682 (“[I]t is the jury which observes the witnesses, judges their credibility and hears their testimony, accepting or rejecting it in whole or in part.” (quotation omitted)). The fact that the officer did not initially recount the assault until prompted by the prosecutor does not mean that the jury could not credit his testimony regarding the assault.

[¶13] Next, the defendant suggests that the evidence failed to establish that he knowingly made contact with the officer. He argues that the evidence failed to exclude the reasonable conclusion that any contact between his finger and the officer was either the result of inadvertent gesticulation or impliedly consented to by the officer during a heated argument. We determine that the evidence was sufficient for the jury to reject these conclusions. See id. The officer testified that the defendant told him he “better not disrespect [the defendant].” The jury also heard that, after the defendant exited the vehicle, the officer told the defendant to back away from the officer, and that the defendant did not do so. Then, as the defendant “was pointing and yelling at [the officer], he shoved his finger into [the officer’s] chest.” Viewing all the

evidence and all reasonable inferences drawn therefrom in the light most favorable to the State, we conclude that a reasonable jury could have found that the sole rational conclusion was that the defendant purposely or knowingly caused unprivileged physical contact with the officer by, as alleged in the complaint, “put[ting] his left index finger onto [the officer’s] chest and then show[ing] it into him.” See Seibel, 174 N.H. at 445.

[¶14] We next address the defendant’s argument that the evidence was insufficient to support his conviction for resisting arrest under RSA 642:2. To convict the defendant, the State had to prove that the defendant “knowingly or purposely physically interfere[d] with a person recognized to be a law enforcement official . . . seeking to effect an arrest or detention of the [defendant].” RSA 642:2.

[¶15] We conclude that there was sufficient evidence for a rational jury to find that the defendant physically interfered with the officer’s efforts to arrest him by, as alleged in the complaint, “pulling away, squaring off, and then struggling to get away.” The officer testified that when he told the defendant he was under arrest — “roughly” at the same time he grabbed the defendant’s wrist — the defendant “pulled away,” the officer felt “[the defendant’s] muscles tightening,” and the defendant turned towards the officer. The officer then brought the defendant to the ground and began handcuffing him with the assistance of the backup officer who had arrived on scene to assist. The officer testified that “it took quite some time” to lock the handcuffs because the defendant “was still struggling with his arms” and that his “thrashing” and “wiggling” made it difficult to secure the handcuff lock. The jury also heard testimony from the backup officer, who testified that he believed the defendant “was tensing up” and “clenching” his hands while being handcuffed, and that the process took “not a normal amount of time.” In addition to this testimony, the jury reviewed and considered these events as they were depicted on the video. Based on this evidence, a rational jury could have found that the defendant physically resisted the officer’s attempts to arrest him. See RSA 642:2. A reasonable jury could also have found that the sole rational conclusion based on the evidence was that the defendant acted knowingly or purposely. See id.; State v. Morrill, 169 N.H. 709, 719 (2017) (concluding that evidence was sufficient to show that defendant knowingly possessed cocaine and rejecting defendant’s argument that “it would have been reasonable to infer that she did not know that the cocaine was there” (brackets omitted)).

[¶16] The defendant again offers alternative explanations and interpretations of the evidence that he contends would provide a rational jury with bases to acquit. The defendant argues that the officer grabbed him and threw him to the ground before the defendant understood that he was being placed under arrest, and the evidence thus did not establish that he knowingly resisted arrest. The defendant also argues that the evidence failed to establish that his physical movements amounted to actual interference with the arrest.

He contends that the evidence on these issues did not exclude all reasonable conclusions other than guilt.

[¶17] Again, we defer to the jury’s judgment on such matters as resolving conflicts in the testimony, measuring the credibility of the witnesses, and determining the weight to be given evidence. See Gubitosi, 152 N.H. at 680, 682. The jury heard testimony that the officer told the defendant he was under arrest as — or right before — the officer grabbed the defendant’s wrist. The jury also heard testimony that the defendant was “struggling” while being handcuffed and that his “thrashing and wiggling” made it “quite difficult” to secure the lock, and that the process took “not a normal amount of time for just an arrest.” In conjunction with this testimony, the jury also saw the video depicting the defendant’s arrest. We conclude that the defendant’s proffered conclusions are not sufficiently reasonable that the jury could not have found proof of guilt beyond a reasonable doubt. See Seibel, 174 N.H. at 445.

[¶18] Lastly, the defendant argues that his actions amounted to de minimis conduct for the purposes of both charges. We note that this argument is not preserved, see State v. Blackmer, 149 N.H. 47, 48 (2003), and does not constitute plain error, see State v. Ortiz, 162 N.H. 585, 591 (2011) (“For the purposes of the plain error rule, an error is plain if it was or should have been obvious in the sense that the governing law was clearly settled to the contrary.”); State v. Scott Chandler, No. 2021-0515 (non-precedential order at 1-2), 2022 WL 18427405 (N.H. Sept. 27, 2022) (concluding there was no plain error when trial court did not dismiss resisting arrest charge based on defendant’s argument that his conduct amounted to de minimis act of physical interference).

Affirmed.

MACDONALD, C.J., and DONOVAN and GOULD, JJ., concurred.