

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JOHN WHITELOCK TELLAM,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2022-2360

[October 11, 2023]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Darren Steele, Judge; L.T. Case No. 432022MM000550A.

Jeffrey H. Garland of Jeffrey H. Garland, P.A., Fort Pierce, for appellant.

Ashley Moody, Attorney General, Tallahassee, and Richard Valuntas, Senior Assistant Attorney General, West Palm Beach, for appellee.

CONNER, J.

The defendant appeals his convictions for trespassing on land and resisting an officer without violence. The defendant argues the trial court erred in denying his motion for judgment of acquittal on both counts. We affirm on the trespassing count without further discussion. We reverse, however, on the resisting arrest count, as the State's evidence was insufficient to establish an essential element of the crime.

Background

This case stems from the defendant's conduct in driving onto a neighbor's property in violation of the neighbor's no trespass order and damaging the neighbor's mailbox when backing out of the driveway. After the responding deputy spoke with the neighbor and investigated the matter, the deputy determined he had probable cause to arrest the defendant for criminal mischief and trespassing, both misdemeanors.

When the deputy arrived at the defendant's residence, the defendant was outside. The deputy called the defendant's name, stated he needed to talk to the defendant, and told the defendant not to go inside. The

defendant nonetheless proceeded to enter his home and the deputy pursued him.

Just as the defendant crossed the threshold, the responding deputy, along with another deputy, reached in and grabbed the defendant. The deputies' arms crossed the threshold into the home. The deputies pulled the defendant back outside and handcuffed him.

The case proceeded to trial. The defendant moved for a judgment of acquittal, which the trial court denied. The jury found the defendant guilty of trespassing on land and resisting an officer without violence, and not guilty of criminal mischief. The defendant was adjudicated guilty and received two consecutive one-year sentences.

Appellate Analysis

The trial court's denial of a motion for judgment of acquittal is reviewed de novo. *Kocaker v. State*, 119 So. 3d 1214, 1224 (Fla. 2013).

On appeal, the defendant argues the trial court erred in denying a judgment of acquittal on his resisting arrest count because the deputies had improperly entered his home, and therefore were not lawfully executing a legal duty in arresting him. We agree.

Convicting a defendant when the State has failed to prove an element that is essential to the commission of the crime is fundamental error. *F.B. v. State*, 852 So. 2d 226, 230-31 (Fla. 2003).

"To establish the offense of resisting an officer without violence, 'the State must prove two elements: (1) the officer was engaged in the lawful execution of a legal duty and (2) the defendant's action constituted obstruction or resistance of that lawful duty.'" *Seiracki v. State*, 333 So. 3d 802, 804 (Fla. 2d DCA 2022) (quoting *C.W. v. State*, 76 So. 3d 1093, 1095 (Fla. 3d DCA 2011)); see also § 843.02, Fla. Stat. (2021). "[I]t is settled that the State cannot prove that the police are in the lawful execution of a legal duty when they arrest a suspect if the arrest itself is executed unlawfully." *Nieves v. State*, 277 So. 3d 745, 751 (Fla. 2d DCA 2019).

"[A] warrantless home entry, accompanied by a search, seizure, and arrest is not justified by hot pursuit when the underlying conduct for which there is alleged probable cause is a nonviolent misdemeanor and the evidence related thereto is outside the home." *State v. Markus*, 211 So. 3d 894, 897 (Fla. 2017). Rather,

[a]n officer must consider all the circumstances in a pursuit case to determine whether there is a law enforcement emergency. On many occasions, the officer will have good reason to enter—to prevent imminent harms of violence, destruction of evidence, or escape from the home. But when the officer has time to get a warrant, he must do so—even though the misdemeanor fled.

Lange v. California, 141 S. Ct. 2011, 2024 (2021). “This is true even where the police otherwise have probable cause to arrest the suspect and could make the arrest without a warrant were he, for example, just out on the street.” *Nieves*, 277 So. 3d at 748.

Thus, the fact that the responding deputy had probable cause to arrest the defendant for trespassing or another misdemeanor did not, by itself, excuse the deputies from getting a warrant before entering the defendant’s home—a space protected by the Fourth Amendment—to arrest him for that offense. The State does not argue any exigencies were present, nor does the record indicate that any of the permissible exigencies—“to prevent imminent harms of violence, destruction of evidence, or escape from the home”—existed. *See Lange*, 141 S. Ct. at 2024. The deputies’ entry into the defendant’s home was therefore unjustified.

The fact that the deputies were chasing the defendant and only partially entered the home does not change this result. “[T]he Fourth Amendment has drawn a firm line at the entrance to the house.” *Payton v. New York*, 445 U.S. 573, 590 (1980). “The law is well-settled that without consent, a warrant, or exigent circumstances, law enforcement may not cross the threshold to effect an arrest.” *Herrera-Fernandez v. State*, 984 So. 2d 644, 647 (Fla. 4th DCA 2008); *see also Markus*, 211 So. 3d at 905 (“It is axiomatic that the ‘physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.’” (quoting *Welsh v. Wisconsin*, 466 U.S. 740, 748 (1984))). In other words, no exception to the threshold rule exists where the officer only reaches an arm inside, even where the officer is already in pursuit of the misdemeanor, or where the officer has announced an intention to detain or arrest the misdemeanor while he or she is outside the residence. *See Seiracki*, 333 So. 3d at 803; *Markus*, 211 So. 3d at 897-98.

Conclusion

Accordingly, the defendant's arrest was unlawful, and the deputies were not lawfully executing a legal duty when they arrested the defendant. *See Nieves*, 277 So. 3d at 751. The trial court therefore fundamentally erred in denying the defendant's motion for judgment of acquittal on his resisting arrest count. We affirm the defendant's conviction for trespass without discussion, but reverse defendant's conviction for resisting an officer without violence and remand for entry of a judgment of acquittal.

Affirmed in part, reversed in part, and remanded.

CIKLIN and LEVINE, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.