

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE H.C.

No. 2 CA-JV 2014-0158
Filed May 12, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JV20001602
The Honorable Geoffrey L. Ferlan, Judge

AFFIRMED

COUNSEL

Barbara LaWall, Pima County Attorney
By Bunkye Chi, Deputy County Attorney, Tucson
Counsel for State

Lori J. Lefferts, Pima County Public Defender
By Susan C. L. Kelly, Assistant Public Defender, Tucson
Counsel for Minor

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MEMORANDUM DECISION

Judge Howard authored the decision of the Court, in which Presiding Judge Kelly and Judge Vásquez concurred.

H O W A R D, Judge:

¶1 The juvenile court adjudicated H.C. delinquent upon finding he had committed two counts of aggravated assault of a peace officer, two counts of assault (domestic violence), and one count each of resisting arrest and disorderly conduct (domestic violence). The court imposed a nine-month term of probation. On appeal, H.C. argues that the entry into his home by law enforcement officers was improper, requiring us to vacate his adjudications for aggravated assault and resisting arrest.

¶2 We view the facts in the light most favorable to sustaining the juvenile court's adjudication. *See In re Julio L.*, 197 Ariz. 1, ¶ 6, 3 P.3d 383, 385 (2000). In March 2014, law enforcement officers responded to H.C.'s home in response to a 9-1-1 call reporting a domestic disturbance. H.C. had backhanded his nine-year-old sister Z. in the face and, when his younger brother N. sought to intervene, the two fought, resulting in N. sustaining a bloody nose. N. then left with Z. and called their father, who called 9-1-1.

¶3 Officers arrived at the house and asked to speak to H.C., who then came to the door. When they asked to talk to his siblings, he told the officers they could not enter the residence without a warrant. An officer explained that a warrant was not necessary because they were conducting a welfare check, but H.C. then stepped out of the home while attempting to close the front door behind him. The officer placed his foot in the doorway to prevent the door from closing, and H.C. pushed the officer in the chest. As the officer began to grapple with H.C., H.C. pushed the other officer in the chest. As the three struggled, they entered the

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residence. H.C. kicked one of the officers in the chest several times before he was detained.

¶4 H.C. argues the officer entered the residence by preventing him from closing the door, and that entry was improper because it was made without a warrant and in the absence of exigent circumstances. He reasons that, therefore “[a]ll evidence regarding what followed [the] impermissible entry should be suppressed.” But H.C. did not seek suppression of any evidence below – although he raised the issue of illegal entry below, it was in the context of an argument that he was justified in using force in response. Therefore, this claim is subject only to review for fundamental, prejudicial error. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005). H.C. has not argued any error is fundamental and thus he has waived the argument on appeal. *See State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17, 185 P.3d 135, 140 (App. 2008). Accordingly, we do not address it further.

¶5 H.C. also suggests that, because the officers “triggered” his arrest by illegally entering his home, his convictions for aggravated assault and resisting arrest are improper. Even if we agreed the officers lacked a basis to arrest H.C., however, the right to resist an illegal arrest is limited. A person may not threaten or use physical force “[t]o resist an arrest that the person knows . . . is being made by a peace officer . . . , whether the arrest is lawful or unlawful, unless the physical force used by the peace officer exceeds that allowed by law.” A.R.S. § 13-404(B)(2). H.C. does not suggest the officers used excessive physical force in detaining him, nor would the record support such an argument. And it naturally follows that, if a person is not permitted to use physical force to resist an illegal arrest, he or she cannot use physical force to resist an improper warrantless entry. *Cf. State v. Hatton*, 116 Ariz. 142, 148, 568 P.2d 1040, 1046 (1977) (person may not “resist a search warrant later found to be illegal.”). Thus, even assuming the officers lacked authority to enter H.C.’s residence, that fact does not affect the propriety of his convictions.

¶6 We affirm the juvenile court’s order adjudicating H.C. delinquent and its disposition.