

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

NATALIE BRUZZESE,

Appellant,

v.

Case No. 5D18-3945

STATE OF FLORIDA,

Appellee.

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Opinion filed April 3, 2020

Appeal from the Circuit Court
for Osceola County,
Greg A. Tynan, Judge.

Matthew R. McLain, of McLain Law, P.A.,
Longwood, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Kristen L. Davenport,
Assistant Attorney General, Daytona
Beach, for Appellee.

TRAVER, J.

Natalie Bruzzese appeals a final judgment finding her guilty of resisting an officer without violence and withholding adjudication on resisting an officer with violence. On appeal, she raises five issues, only one of which merits discussion. Because Bruzzese's efforts to resist her arrest were part of a continuous episode, her conviction for resisting without violence violates double jeopardy.

This unfortunate incident occurred at a Radisson hotel. Due to disruptive behavior at the hotel bar, employees asked Bruzzese—a member of the Florida Bar—and her wife to leave the premises. Bruzzese refused, yelling and using profane language. The hotel then trespassed them and called law enforcement to effectuate their removal. Two sheriff's deputies arrived and first encountered Bruzzese sitting outside her hotel room. She was arguing with and yelling profanities at her wife and hotel security. Bruzzese refused the deputies' multiple invitations to leave, so law enforcement decided to place her under arrest.

Bruzzese refused to stand up or allow the deputies to place her in handcuffs. She yelled that they had no right to arrest her or take her to jail. Accordingly, they stood her up against the hallway wall. It took both deputies to handcuff Bruzzese. They then escorted her to the elevator, despite her continued efforts not to go. Bruzzese was yelling vulgar obscenities in a loud voice. In the elevator, Bruzzese flailed around and tried to pull away, causing law enforcement to push her against the elevator wall. Two Radisson employees then led the officers and Bruzzese from the elevator to the street. During this time, Bruzzese continued to yell. She also stopped walking and began dragging her feet, causing the deputies to carry her. She kicked one of the deputies in the shin. One of the hotel employees recorded this part of the incident on his cell phone, and the jury saw the video.

The jury found Bruzzese guilty of both resisting with violence and resisting without violence. The trial judge, who patiently and professionally oversaw a proceeding marked by Bruzzese's repeated interruptions and arguments with her lawyer, spared her law license by withholding adjudication on the felony charge of resisting with violence. He

adjudicated her guilty of the misdemeanor offense of resisting without violence because she had a previous withhold of adjudication on this type of charge.

A trial court may convict a defendant of both resisting arrest without violence and resisting arrest with violence if the defendant's behavior constitutes two separate acts. *Madison v. State*, 777 So. 2d 1175, 1176 (Fla. 5th DCA 2001). However, a defendant's continuous resistance to an ongoing effort to arrest her constitutes a single instance of resistance, even if several officers are involved in the effort. *Id.*

Neither party raised a double jeopardy challenge with the trial court, and accordingly, it was not asked to decide whether Bruzzese's conduct constituted a single episode of resisting arrest. Nevertheless, Bruzzese may raise this issue for the first time on appeal because a double jeopardy violation amounts to fundamental error. *Honaker v. State*, 199 So. 3d 1068, 1070 (Fla. 5th DCA 2016) (citing *Bailey v. State*, 21 So. 3d 147, 149 (Fla. 5th DCA 2009)).¹

Bruzzese's convictions flow from a single criminal episode. See *Vasquez v. State*, 778 So. 2d 1068, 1070 (Fla. 5th DCA 2001) (citing *Wallace v. State*, 724 So. 2d 1176, 1178–81 (Fla. 1998)); *Williams v. State*, 959 So. 2d 790, 793 (Fla. 2d DCA 2007). Both officers were involved in the entire incident, which continued uninterrupted from the time they first encountered Bruzzese outside her hotel room until they placed her in a squad car. Further, no temporal break occurred throughout this incident, and Bruzzese did not

¹ Although the trial court withheld adjudication on Bruzzese's conviction for resisting with violence, it nevertheless qualifies as a conviction for double jeopardy purposes. See *Griffin v. State*, 69 So. 3d 344, 346 (Fla. 4th DCA 2011) (citing *Bolding v. State*, 28 So. 3d 956, 957 (Fla. 1st DCA 2010)).

have time to reflect and form a new criminal intent. See *R.J.R. v. State*, 88 So. 3d 264, 268 (Fla. 1st DCA 2012). No intervening act interrupted her resistance.

Accordingly, because both convictions were based on Bruzzese's ongoing attempts to resist arrest, they violate her right against double jeopardy. See *Swilley v. State*, 845 So. 2d 930, 933 (Fla. 5th DCA 2003). This matter is therefore remanded for the trial court to vacate her misdemeanor conviction for resisting arrest without violence. See *Honaker*, 199 So. 3d at 1070.

REVERSED and REMANDED.

EDWARDS and EISNAUGLE, JJ., concur.