NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

CLIFFORD JAMES LACHMAN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 2D19-685

Opinion filed November 6, 2020.

Appeal from the Circuit Court for Charlotte County; Donald H. Mason, Judge.

Howard L. Dimmig, II, Public Defender, and Clark E. Green, Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Lindsay D. Turner, Assistant Attorney General, Tampa, for Appellee.

SILBERMAN, Judge.

Clifford James Lachman seeks review of his judgment and sentences for trafficking in methamphetamine, possession of methamphetamine with intent to sell, possession of cannabis with intent to sell, and resisting an officer without violence. Lachman does not challenge the drug-related convictions but argues that the evidence

on the resisting charge was insufficient to convict him. Because defense counsel invited the error by conceding Lachman's guilt as to the resisting charge in closing argument, we must affirm.

The charges arose after Lachman caught a police officer's attention as Lachman was riding his bicycle down the road. The officer followed Lachman, and Lachman watched the officer out of the corner of his eye. As the officer passed him, Lachman stopped his bicycle near a wooded area, stood up, and turned away. Lachman then rode toward the wood line, dropped his bicycle, and ran into the woods. The officer gave chase on foot and eventually caught up with Lachman. A backpack that Lachman had been wearing was found nearby with drugs inside.

Section 843.02, Florida Statutes (2017), prohibits resisting, obstructing, or opposing an officer "in the lawful execution of any legal duty, without offering or doing violence to the person of the officer." "[T]o support a conviction for obstruction without violence, the State must prove: (1) the officer was engaged in the lawful execution of a legal duty; and (2) the defendant's action, by his words, conduct, or a combination thereof, constituted obstruction or resistance of that lawful duty." C.E.L. v. State, 24 So. 3d 1181, 1185-86 (Fla. 2009).

Generally, "flight, standing alone, is insufficient to form the basis of a resisting without violence charge." Id. at 1186. Flight is not a crime, so a defendant's flight in itself is insufficient to support a charge of resisting without violence. Id. "To be guilty of unlawfully resisting an officer, an individual who flees must know of the officer's intent to detain him, and the officer must be justified in making the stop at the point when the command to stop is issued." Id.

At trial, defense counsel argued at length that the evidence did not support convicting Lachman of any of the drug charges. As to the resisting charge, counsel did not argue a motion for judgment of acquittal. In fact, counsel conceded Lachman's guilt during closing argument when she stated, "He ran from them, he is absolutely one hundred percent guilty of resisting [an] officer without violence."

Lachman argues that the evidence of resisting or obstructing was insufficient because the State failed to prove that he knew of the officer's intent to detain him. In support of his argument, Lachman relies upon several decisions reversing resisting convictions based on flight in the absence of a police order to stop. See, e.g., Brown v. State, 199 So. 3d 1010, 1012 (Fla. 4th DCA 2016); Perez v. State, 138 So. 3d 1098, 1100 (Fla. 1st DCA 2014); O.B. v. State, 36 So. 3d 784, 788 (Fla. 3d DCA 2010); S.B. v. State, 31 So. 3d 968, 970 (Fla. 4th DCA 2010). Although these cases support Lachman's argument, none involves a concession of guilt as occurred here.

A fair reading of defense counsel's closing argument suggests that she conceded guilt on the resisting charge to gain credibility with the jury in furtherance of her argument for acquittal on the more serious drug charges. While the strategy was unsuccessful, counsel's concession of guilt amounts to invited error and precludes our review of the asserted error on direct appeal.

In Flowers v. State, 149 So. 3d 1206, 1207 (Fla. 1st DCA 2014), the defendant was convicted of a lesser included charge that was time-barred. The First District upheld the conviction based on the invited error doctrine noting that defense counsel sought the instruction as to the time-barred charge in an effort to defend against a more serious charge. Id. at 1208. The court explained as follows: "The

invited error doctrine is succinct: '[A] party cannot successfully complain about an error for which he or she is responsible or of rulings that he or she invited the court to make.' " Id. at 1207-08 (quoting Anderson v. State, 93 So. 3d 1201, 1203 (Fla. 1st DCA 2012)); see also Johnson v. State, 133 So. 3d 602, 604 (Fla. 1st DCA 2014), disapproved on other grounds by State v. Tuttle, 177 So. 3d 1246 (Fla. 2015); Rosen v. State, 940 So. 2d 1155, 1161 (Fla. 5th DCA 2006). Thus, we affirm without prejudice to any right Lachman may have to file a motion for postconviction relief.

Affirmed.

CASANUEVA and LUCAS, JJ., Concur.