

Third District Court of Appeal

State of Florida

Opinion filed July 15, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D20-93
Lower Tribunal No. 19-1698

B.B., a juvenile,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Orlando A. Prescott, Judge.

Carlos J. Martinez, Public Defender, and Deborah Prager, Assistant Public Defender, for appellant.

Ashley Moody, Attorney General, and Luis Enrique Rubio, Assistant Attorney General, for appellee.

Before SCALES, HENDON, and LOBREE, JJ.

HENDON, J.

B.B., a juvenile, challenges the trial court's finding of delinquency for the offense of resisting an officer without violence in violation of section 843.02 of the Florida Statutes.¹ B.B. argues that the trial court erred as a matter of law by denying his motion for judgment of dismissal. In making this argument, B.B. contends that the State failed to establish that Lieutenant Gabriel was acting in the lawful execution of a legal duty when he ordered B.B. to stop after B.B. bailed from a suspected stolen vehicle. We disagree.

I. FACTS

B.B. was charged with one count of resisting an officer without violence in violation of section 843.02 of the Florida Statutes. Although B.B. did not call any witnesses, his defense at the adjudicatory hearing was that he got into a vehicle with people he did not know, and he ran after bailing from the vehicle because he was running out of fear and safety for himself.

¹ Section 843.02 provides:

Whoever shall resist, obstruct, or oppose any officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission; county probation officer; parole and probation supervisor; personnel or representative of the Department of Law Enforcement; or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

At the adjudicatory hearing, the State called Lieutenant Gabriel, who testified as follows. He received a call over the radio regarding a stolen vehicle. The victim, who had previously reported the theft of his vehicle, was in the process of following his stolen car. Within a few minutes, Lieutenant Gabriel came into contact with the victim, who described his vehicle as a silver Infiniti SUV with a temporary tag. A BOLO was then issued. Within a few blocks of where the victim and Lieutenant Gabriel spoke, Lieutenant Gabriel noticed a silver Infiniti SUV behind him. Lieutenant Gabriel made a U-turn and approached the Infiniti from behind and confirmed that the Infiniti had a temporary tag. The driver of the Infiniti accelerated, and Lieutenant Gabriel activated the lights and sirens of his unmarked police car. The unmarked police vehicle had a standard police siren, red and blue lights on the top windshield, red and blue lights on the grill, flashers on the headlights, and red and blue lights and a yellow light on the back of the vehicle. The driver of the Infiniti accelerated and a chase ensued, during which time the driver of the Infiniti ran a stop sign, began to drive in the wrong direction, and then drove on the grass to avoid a marked vehicle that had blocked the Infiniti's path. Lieutenant Gabriel continued to chase the Infiniti into an apartment complex that had no other exit. The Infiniti slowed down, but before it came to a complete stop, the doors opened and the four occupants exited and fled into the apartment complex. B.B. exited from the rear driver's side of the Infiniti.

Lieutenant Gabriel, who was in full uniform with his gun drawn, ordered the occupants of the vehicle four or five times to stop and to get to the ground, with the first time being when the individuals were only three to five feet away. The occupants began to flee, and Lieutenant Gabriel pursued the driver of the vehicle and B.B., but lost sight of them. Lieutenant Gabriel radioed to other officers to set up two perimeters in the area and requested K-9 and aviation assistance. The driver of the vehicle was apprehended, and thereafter, Lieutenant Gabriel went to the second perimeter where he saw B.B. scaling a ten-foot fence and entering another apartment complex. B.B. was found by K-9 and apprehended by other officers. Lieutenant Gabriel identified B.B. as the person he saw bail out of the rear driver's side of the Infiniti.

After the State rested, the defense moved for a judgment of dismissal, which the trial court denied. The defense rested without calling any witnesses and renewed its motion for judgment of dismissal. After hearing closing arguments, the trial court denied the defense's motion for judgment of dismissal.

The trial court found B.B. delinquent, finding that the State established the charged offense beyond a reasonable doubt. The trial court withheld adjudication and placed B.B. on probation with certain conditions. B.B.'s appeal followed.

II. ANALYSIS

B.B. contends that the trial court erred as a matter of law by denying his

motion for judgment of dismissal as to the charge of resisting an officer without violence. In making this argument, B.B. contends that the State failed to establish that Lieutenant Gabriel was acting in the lawful execution of a legal duty when he ordered B.B. to stop after B.B. bailed from a suspected stolen vehicle. We disagree.

A trial court's ruling denying a motion for judgment of dismissal in a juvenile case is reviewed de novo. See O.P-G. v. State, 290 So. 3d 950, 954 (Fla. 3d DCA 2019) (noting that "[t]he standard of review that applies to a motion for judgment of dismissal in a juvenile case is the same standard that applies to a motion for judgment of acquittal in a criminal case," and therefore, the standard of review is de novo) (internal quotation marks and citations omitted).

To support the finding of guilt for the offense of resisting an officer without violence under section 843.02, "the State must prove that: (1) the officer was engaged in the lawful execution of a legal duty; and (2) the defendant's actions, by his words, conduct, or a combination thereof, constitute obstruction or resistance of the lawful execution of a legal duty." M.J. v. State, 67 So. 3d 1189, 1190 (Fla. 3d DCA 2011); see also C.E.L. v. State, 24 So. 3d 1181, 1185-86 (Fla. 2009). "The element of lawful execution of a legal duty is satisfied if an officer has either a founded suspicion to stop the person or probable cause to make a warrantless arrest." M.J., So. 3d at 1190. Further, "[a] stop is justified when an officer observes facts giving rise to a reasonable and well-founded suspicion that criminal activity has

occurred or is about to occur.” Id. Flight, standing alone, is insufficient to form the basis of a resisting arrest without violence charge. C.E.L., 24 So. 3d at 1186. “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.

In the instant case, Lieutenant Gabriel was entitled to conduct an investigatory stop of the vehicle in which B.B. was a passenger to investigate the suspected theft of the vehicle, which had been reported as stolen. See Prestley v. State, 896 So. 2d 862, 864 (Fla. 5th DCA 2005). If the occupants of the vehicle would not have bailed and fled, Lieutenant Gabriel would have been entitled to detain the occupants, including B.B., to investigate their participation, if any, in the theft of the vehicle. Id. Thus, Lieutenant Gabriel was engaged in the lawful execution of a legal duty when he commanded B.B. to stop, and B.B.’s actions constituted an obstruction or resistance of that lawful duty. Accordingly, we affirm.

Affirmed.