STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED December 15, 2015
v	No. 323284 Bay Circuit Court
DENNIS FRANCIS BRENAY, JR., Defendant-Appellee.	LC No. 13-010885-FH

Before: GADOLA, P.J., and K. F. KELLY and FORT HOOD, JJ.

PER CURIAM.

Following a jury verdict finding defendant guilty of resisting and obstructing a police officer, MCL 750.81d(1), the circuit court granted defendant's motion for a directed verdict. Plaintiff appeals as of right and we affirm.

This prosecution stems from events occurring between police officers and defendant as the officers were investigating a possible violation of a personal protection order (PPO). After speaking with the protected party, Bay City Public Safety Department Officer Troy Sierras made contact with defendant and his father, Dennis Brenay Sr.,[1] at the latter's residence. Sierras was accompanied by Essexville Public Safety Department Lieutenant Michael Schartow and Officer Kyle Glocksine.

When the officers arrived, Brenay Sr. answered the door and then left to retrieve defendant from inside the home. When he returned, Brenay Sr. opened the door while defendant remained behind him. The officers asked to speak with defendant outside, but he remained behind his father in the home. Sierras testified that as he was questioning defendant about the alleged PPO violation, Brenay Sr. said "that's enough" and "tried to close the door on us." According to Schartow, Brenay Sr. was not ordered to keep the door open. Sierras testified that he then said "we're not done" and "he's coming with me," referring to defendant. Glocksine testified that Brenay Sr. then advised defendant to call his lawyer, but Sierras "said no, you're under arrest." According to Sierras, he had not said anything about arresting defendant before

[1] Defendant and Brenay Sr. were tried together on charges of resisting and obstructing a police officer; however, the jury found Brenay Sr. not guilty.

Brenay Sr. began to close the door. He stated that he "tried to hold the door" and "reached over and grabbed [defendant] by the wrist" with his right hand and told defendant he was under arrest. Sierras testified that he wanted to prevent defendant from "running back into the house" because "he was under arrest"; a struggle then ensued. Schartow testified that he did not tell defendant he was under arrest, but only "told him to stop resisting." Schartow testified that he deployed a Taser toward defendant, but it made poor contact, so he executed "a drive-stun, which is where you take the unit, itself, and push it into the skin," which was partially effective. Eventually defendant was subdued, handcuffed, and removed from the home.

At the close of plaintiff's proofs, defendant moved for a directed verdict, which the court took under advisement.[2] At the post-verdict motion hearing, the court held that Sierras had the right to make a warrantless arrest of defendant for violating the PPO and that the issue before the court was whether Sierras entered "the house without permission to effectuate the arrest." The court further found that "at the very minimum, Officer Sierras reached in across the threshold of the door" to grab defendant and effect the arrest and that this constituted entry into the home. Defendant argued that he could properly resist the unlawful conduct of the officers, i.e., the entry into the home. Plaintiff argued that defendant did not have standing to resist the conduct of the police because it was not his home. Plaintiff also argued that after the door was opened, the officers had "access" to the immediate area within which defendant was located.

The court ruled that defendant did have standing to raise this issue. Further, the court found that the officers "ultimately went into that house without the benefit of a warrant," which constituted unlawful police conduct under *People v Moreno*, 491 Mich 38; 814 NW2d 624 (2012). The court then granted defendant's motion for a directed verdict. Plaintiff argues that the court erred in doing so. We now review the trial court's decision on defendant's motion for a directed verdict "de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v Quinn*, 305 Mich App 484, 491; 853 NW2d 383 (2014) (quotation marks and citation omitted).

The resisting and obstructing statute, MCL 750.81d, "did not abrogate the right to resist unlawful police conduct." *Moreno*, 491 Mich at 48. Under Michigan common law, a person has a right to use reasonable force to resist unlawful arrests and unlawful invasions of private rights. *Id.* at 46-47. Considering *Moreno*, this Court stated that it is "clear" that "as at common law, the prosecution must establish that the officers acted lawfully as an actual element of the crime of resisting or obstructing a police officer under MCL 750.81d." *Quinn*, 305 Mich App at 492.

Both the Michigan Constitution, Const 1963, art 1, § 11, and the United States Constitution, US Const, Am IV, Am XIV, grant individuals the right to be secure from unreasonable searches and seizures. It is axiomatic that a warrantless search or seizure inside a home is presumptively unreasonable. *Kentucky v King*, 563 US 452, 459; 131 S Ct 1849; 179 L Ed 2d 865 (2011). The United States Supreme Court has affirmed the following:

---

[2] See MCR 6.419(B).

> The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home—a zone that finds its roots in clear and specific constitutional terms: "The right of the people to be secure in their . . . houses . . . shall not be violated." That language unequivocally establishes the proposition that "[a]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant. [*Payton v New York*, 445 US 573, 589-590; 100 S Ct 1371; 63 L Ed 2d 639 (1980) (citation omitted; alterations in *Payton*).]

The "chief purpose" of the right is to "protect against physical entry of the home." *People v Gillam*, 479 Mich 253, 260; 734 NW2d 585 (2007). When a police officer knocks on a door without a warrant in hand, "they do no more than any private citizen might do" and "the occupant has no obligation to open the door or to speak." *King*, 563 US at 469-470. And "even if an occupant chooses to open the door and speak with the officers, the occupant need not allow the officers to enter the premises and may refuse to answer any questions at any time." *Id*. at 470. Therefore, absent exigent circumstances, to enter an individual's home, police must possess a warrant or obtain consent from the individual. *Id.* at 469-470.

A police officer may make a warrantless arrest for a PPO violation. MCL 764.15b. However, the police must have a search warrant to search for the subject of an arrest warrant in the home of a third party absent consent or exigent circumstances. *Steagald v United States*, 451 US 204, 216; 101 S Ct 1642; 68 L Ed 2d 38 (1981). In Michigan "an arrest warrant alone is not sufficient authority for entry into the home of a third party to arrest the subject of an arrest warrant." *People v Oliver*, 417 Mich 366, 376; 338 NW2d 167 (1983). When officers enter a home without complying with the warrant requirements, their presence is unlawful. *Id*. at 385-386. See also *People v Rice*, 192 Mich App 240, 245; 481 NW2d 10 (1991) ("[A]bsent exigent circumstances, a police officer is not authorized to enter a private home without consent to make a misdemeanor arrest without a warrant"). Michigan has not adopted a *de minimis* physical intrusion exception to this rule. However, when a defendant stands "exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house," the defendant cannot retreat into the house to "thwart an otherwise proper arrest." *United States v Santana*, 427 US 38, 42; 96 S Ct 2406; 49 L Ed 2d 300 (1976).

Although there was probable cause for the arrest, the officers lacked authority to enter Brenay Sr.'s home. The officers did not have a search warrant, and Brenay Sr. never gave the officers consent to enter his home. Indeed, Brenay Sr. was attempting to close the door on the officers when defendant was seized. Thus, when Sierras reached across the threshold and past Brenay Sr. to grab defendant, he entered the home without authorization. Defendant never placed himself in a public place; rather, he was inside the home and behind his father for the duration of the conversation. The existence of probable cause to arrest does not immunize illegal entry of a private residence, particularly in the misdemeanor context. *Payton*, 445 US at 589-

590; *Rice*, 192 Mich App at 245. Therefore, Sierras's conduct violated constitutional protections and was thus unlawful.

Additionally, there were no exigent circumstances to justify the arrest. There was no evidence that defendant might flee the house before a warrant was obtained. Defendant's actions were clearly an immediate reaction to the conduct of the officers. And defendant could not be classified as a fleeing felon because of his attempt to move further inside the house, given that he had a common-law right to resist unlawful arrest. An officer may not manufacture exigent circumstances to circumvent warrant requirements. *King*, 563 US at 461.

Affirmed.

/s/ Michael F. Gadola
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood