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Washington State
Court of Appeals
Division Two

August 1, 2017

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

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| CITY OF TACOMA,<br><br>Respondent,<br><br>v.<br><br>ANTONIA RAINWATER,<br><br>Petitioner. | No. 48749-7-II<br><br><br><br><br><br>UNPUBLISHED OPINION |

SUTTON, J. — Antonia Rose Rainwater challenges her municipal court jury trial conviction for resisting arrest.[1] She argues that because there were no exigent circumstances justifying her warrantless arrest while inside her home, her arrest was unlawful, and the evidence is insufficient to support her conviction. We agree and reverse the resisting arrest conviction and remand this matter back to the municipal court to dismiss the resisting arrest charge with prejudice.

## FACTS

### I. BACKGROUND

On July 1, 2015, Tacoma Police Officer Ryan Hovey responded to a 911 call reporting a domestic assault. Officer Hovey met Mervin Emanuel Rainwater in a park near his residence.

[1] Rainwater was also convicted of fourth degree assault. She does not challenge that conviction.

Mervin[2] told Officer Hovey that his wife, Rainwater, had scratched his neck and struck him in the mouth.

After talking to Mervin, Officer Hovey and a second officer, Officer Kenneth Gamble, approached the Rainwater residence and attempted to contact Rainwater. Rainwater eventually opened the front door. She remained inside the home and insisted that nothing had happened.

While Rainwater was still inside the door's threshold, Officer Hovey told her that she was under arrest and grabbed her wrist. Rainwater pulled her arm back, "lunged backwards into her house and tried to close the door." Clerk's Papers (CP) at 138. Officer Hovey maintained his grip on Rainwater's wrist and followed her into the house. He then forced her to the floor so he could handcuff her. With Officer Gamble's help, Officer Hovey eventually handcuffed Rainwater and put her in his patrol car.

## II. PROCEDURE

The City of Tacoma charged Rainwater with the fourth degree domestic violence assault of Mervin and with resisting arrest. The case proceeded to a jury trial.

Officer Hovey testified that he believed he had probable cause to suspect that Rainwater had committed "domestic assault" when he contacted Rainwater and that he was required "to try to make an arrest in those circumstances." CP at 134. On cross-examination, Officer Hovey admitted that Rainwater was standing inside the house when he grabbed her wrist. And, when defense counsel asked if Officer Hovey "could have called for an arrest warrant" rather than arrest

[2] Because Mervin and Antonia Rainwater share the same last name, we refer to Mervin by his first name for clarity. We intend no disrespect.

Rainwater, Officer Hovey responded, "Could I have called for one? Not practically, no." CP at 147.

Rainwater testified that when the officers contacted her, they did not tell her what was going on or that she was under arrest. She also testified that the officers just pushed open the door and "knocked [her] to the floor."[3] CP at 207.

In closing argument, the City argued that the officers had probable cause to arrest Rainwater. Defense counsel did not argue that the arrest was not lawful. The jury found Rainwater guilty of fourth degree assault and resisting arrest.

Rainwater appealed the resisting arrest conviction to the superior court. She argued that the State had failed to prove that she had resisted a lawful arrest because the arrest was a warrantless misdemeanor arrest that occurred within her house. The superior court affirmed the conviction, finding, without further elaboration, that "there existed exigent circumstances to enter [Rainwater's house] due to the nature of the crime (domestic violence)." CP at 303-04.

Rainwater filed a motion for discretionary review with this court. A commissioner granted discretionary review. Ruling Granting Review (filed July 15, 2016) at 4.

## ANALYSIS

We review a municipal court's decision according to the standards in RALJ 9.1. *City of Seattle v. May*, 151 Wn. App. 694, 697, 213 P.3d 945 (2009), *aff'd*, 171 Wn.2d 847, 256 P.3d 1161

[3] The municipal court did not instruct the jury on what constituted an unlawful arrest despite Rainwater requesting such an instruction. Rainwater does not argue that the municipal court erred when it refused to instruct the jury on unlawful arrest.

(2011). We review the record before the municipal court. *May*, 151 Wn. App. at 697; *City of Bellevue v. Jacke*, 96 Wn. App. 209, 211, 978 P.2d 1116 (1999).

To determine whether evidence is sufficient to sustain a conviction, we review the evidence in the light most favorable to the State. *State v. Wentz*, 149 Wn.2d 342, 347, 68 P.3d 282 (2003). The relevant question is "whether any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt." *Wentz*, 149 Wn.2d at 347. In claiming insufficient evidence, the defendant necessarily admits the truth of the State's evidence and all reasonable inferences that can be drawn from it. *State v. Drum*, 168 Wn.2d 23, 35, 225 P.3d 237 (2010) (citing *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)).

The City charged Rainwater under Tacoma Municipal Code (TMC) section 8.12.010.2. This section provides that "[a]ny person who shall intentionally prevent or attempt to prevent a police officer or a peace officer of the City of Tacoma from *lawfully* arresting him or her," is declared to be a "disorderly person[]." TMC § 8.12.010.2 (emphasis added). Accordingly, to prove this crime, the City had to prove that Rainwater's arrest was lawful. Rainwater argues that the evidence is insufficient to support her conviction because the City failed to establish that the warrantless arrest was lawful since it occurred inside her home and there were no exigent circumstances justifying the entry into her home. We agree.

"In Washington, absent exigent circumstances, the police are prohibited from arresting a suspect while he or she is standing within the doorway of the residence." *State v. Solberg*, 122 Wn.2d 688, 697, 861 P.2d 460 (1993) (citing *State v. Holeman*, 103 Wn.2d 426, 429, 693 P.2d 89 (1985)); *see also State v. Hinshaw*, 149 Wn. App. 747, 750, 205 P.3d 178 (2009). This prohibition applies regardless of whether the suspected offense is a felony or a misdemeanor. *Solberg*, 122

Wn.2d at 696-97. There is no dispute that Rainwater's arrest was a warrantless arrest or that the arrest occurred while Rainwater was inside the threshold of her home. Thus, assuming probable cause, Rainwater's arrest was only lawful if the City established exigent circumstances. *See State v. Tibbles*, 169 Wn.2d 364, 369, 236 P.3d 885 (2010) (the State has the burden of establishing an exception to the warrant requirement).

To establish exigent circumstances, the City must show that it was impractical or unsafe to obtain a warrant. *Hinshaw*, 149 Wn. App. at 754. To determine if an exigency existed, we consider:

> (1) the gravity of the offense, particularly whether it is violent; (2) whether the suspect is reasonably believed to be armed; (3) whether police have reasonably trustworthy information that the suspect is guilty; (4) [whether] there is strong reason to believe that the suspect is on the premises; (5) [whether] the suspect is likely to escape if not swiftly apprehended; (6) [whether] the entry is made peacefully; (7) [whether] the police are in hot pursuit; (8) [whether] the suspect is fleeing; (9) [whether] the officers or public are in danger; (10) [whether] the suspect has access to a vehicle; and (11) [whether] there is a risk that the police will lose evidence.

*Hinshaw*, 149 Wn. at 754 (citing *State v. Terrovona*, 105 Wn.2d 632, 644, 716 P.2d 295 (1986)). The City does not have to establish every factor, but "the circumstances must show that the officer needed to act quickly." *Hinshaw*, 149 Wn.2d at 754 (citing *State v. Cardenas*, 146 Wn.2d 400, 408, 47 P.3d 127, 57 P.3d 1156 (2002)).

We have reviewed the record and conclude that the City failed to establish exigent circumstances. Thus, the evidence was insufficient to prove the "lawful arrest" element of the offense.

Accordingly, we reverse the resisting arrest conviction and remand to the municipal court to dismiss the resisting arrest charge with prejudice. *See State v. Devries*, 149 Wn.2d 842, 845, 72 P.3d 748 (2003) (when a conviction rests on insufficient evidence, the remedy is generally to reverse and remand with instructions to dismiss the charge with prejudice).

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Sutton, J.

SUTTON, J.

We concur:

Johanson, J.

JOHANSON, P.J.

Melnick, J.

MELNICK, J.