

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

KATHRYN ORBANES

Appellant,

v.

Appeal No. CRC 10-00042 APANO
UCN522009MM031568XXXXNO

STATE OF FLORIDA
Appellee.

_____ /

Opinion filed _____.

Appeal from a judgment and sentence
entered by the Pinellas County Court
County Judge John D. Carballo

Thomas Matthew McLaughlin, Esquire
Attorney for Appellant

Jennifer Y. Colyer, Esquire
Office of the State Attorney
Attorney for Appellee

ORDER AND OPINION

PETERS, Judge.

THIS MATTER is before the Court on Appellant, Kathryn Orbanes', appeal from a conviction, after a jury trial, of Obstructing or Resisting an Officer Without Violence, in violation of § 843.02 Florida Statutes. After review of the record and the briefs, this Court reverses the judgment and sentence.

Factual Background and Trial Court Proceedings

On October 31, 2009, at around 3:30 p.m., a woman called the Clearwater Police Department to complain that her neighbors, the Appellant, Kathryn Orbanes and her husband, George Martin, were playing their music too loudly. Officer Daniel O'Brien of the Clearwater Police Department responded to the call and upon arrival could hear no excessive noise. Officer O'Brien walked into the complaining party's backyard and talked, in turn, with all parties about the situation. The officer asked Appellant and Mr. Martin to keep the music down and asked the complaining party not to park in the Appellant's driveway. Mr. Martin appeared to the officer to have been drinking. There was an odor of alcohol coming from him, he was slurring his speech and talking loudly. When the officer explained to the Appellant and Mr. Martin what he had told the complaining party, Mr. Martin became argumentative and the officer told him to "please just go in your house and keep the noise down." Officer O'Brien concluded his investigation. There was no violation of the municipal noise ordinance. There was no sufficient reason to arrest anyone for disorderly intoxication or disorderly conduct. The officer walked back to his police cruiser, which was parked in the street a short distance away. When the officer arrived at his vehicle he hesitated for a short time and heard noises coming from the Appellant's house. The officer heard a door slam and a loud male voice say, "Thanks a lot, you f----- b----." Officer O'Brien then walked again into and through the backyard of the complaining party's home and found Mr. Martin sitting at the bottom of a staircase in the back of his residence. Officer O'Brien told Mr. Martin that he was causing a disturbance and was being arrested for disorderly intoxication.

Mr. Martin then became argumentative and profane with Officer O'Brien. Mr. Martin said "[y]ou have no right to arrest me. I'm on my property. I didn't [do] anything f----- wrong. Get away from me." Mr. Martin continued sitting on the staircase and arguing with Officer O'Brien. The officer grabbed Mr. Martin's wrist in an attempt to pull him up into a standing position. Mr. Martin resisted the officer, pulled away and braced. After two warnings, Officer O'Brien subdued Mr. Martin with his taser. During this encounter Appellant was inside the house.

Officer O'Brien, testified that as he was attempting to take Martin into custody, the Appellant came outside and pulled Mr. Martin away from him. The Appellant in her testimony denied ever pulling on Mr. Martin and testified that she was only standing beside him. Officer O'Brien testified that he warned Appellant to stop interfering or she would be charged with obstructing an officer. He further testified that the Appellant continued to pull Mr. Martin and then placed herself between Mr. Martin and the officer in a "blocking manner." At that point, Officer O'Brien sprayed Mr. Martin in the face with pepper spray. A back-up officer arrived and completed the arrest of Mr. Martin. Officer O'Brien then arrested the Appellant. In doing so the officer testified that he "had to take her to the ground" because she was "bracing."

In the jury trial, at the conclusion of the State's case, the Appellant moved for judgment of acquittal arguing that the State had failed to show that the officer was in lawful execution of a legal duty. For purposes of the motion, the Appellant conceded that her act of pulling away and blocking the police from arresting Mr. Martin constituted obstruction and identified the sole issue as to whether the officer was in the execution of a legal duty when he attempted to arrest Mr. Martin. The State agreed that the sole issue

was whether the officer had the authority to make an arrest for disorderly intoxication. The trial court found there was no probable cause for the arrest for disorderly intoxication but did not think it was relevant. The trial court denied the motion for judgment of acquittal. The Appellant was found guilty by the jury. This appeal was timely filed.

Issue

Appellant's first issue is that she was entitled to a judgment of acquittal because the State failed to present sufficient evidence to prove the charge of Obstructing or Resisting an Officer Without Violence. As detailed below, this first issue is dispositive and the remaining issues presented in this appeal will not be addressed.

Standard of Review

In reviewing a motion for judgment of acquittal, a de novo standard of review applies. *Pagan v. State*, 830 So.2d 792, 803 (Fla.2002), *cert. denied*, 539 U.S. 919, 123 S.Ct. 2278, 156 L.Ed.2d 137 (2003); *State v. Fagan*, 857 So2d 320 (Fla. 2nd DCA 2003).

Judgments of Acquittal

The rule is well established that the prosecution, in order to present a prima facie case, is required to prove each and every element of the offense charged beyond a reasonable doubt, and when the prosecution fails to meet this burden, the case should not be submitted to the jury, and a judgment of acquittal should be granted. *Baugh v. State*, 961 So.2d 198, 203-204 (Fla. 2007).

Generally, an appellate court will not reverse a conviction that is supported by competent, substantial evidence. *See id.* (citing *Donaldson v. State*, 722 So.2d 177 (Fla.1998); *Terry v. State*, 668 So.2d 954, 964 (Fla.1996)). If, after viewing the evidence in the light most favorable to the State, a rational trier of fact could find the existence of the elements of the crime beyond a reasonable doubt, sufficient evidence exists to sustain a conviction. *See id.* (citing *Banks v. State*, 732 So.2d 1065 (Fla.1999)). In moving for a judgment of acquittal, a defendant "admits not only the facts

