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 PASCO COUNTY
APPELLATE DIVISION**

ANDRE L. GRANT,
Appellant,

v.

STATE OF FLORIDA,
Appellee.
_____/

UCN: 512016CF003762A000ES
Appeal No.: CRC16003762CFAES
L.T. No.: 15-4197-MMAES

On appeal from Pasco County Court,
Honorable William Sestak,

Andre L. Grant,
Pro se,

Office of the State Attorney,
for Appellee.

ORDER AND OPINION

Appellant raises several arguments on appeal, each without merit. Neither the jury's verdict, nor the trial court's rulings contain reversible error. As such, the verdict shall remain undisturbed and the order of the trial court is affirmed.

STATEMENT OF THE CASE AND FACTS

Appellant was charged with obstructing or resisting an officer without violence, in violation of Section 843.02, Florida Statutes. After a jury trial, Appellant was found guilty and sentenced to probation and community service. Appellant appeals his judgment and sentence. Specifically, Appellant claims that Appellee failed to timely disclose a witness; the arresting officers lacked a reasonable belief that an emergency existed, and were thus prohibited from entering the home; the trial court erred in refusing to give Appellant's requested jury instructions; the trial court erred in denying Appellant's motion for judgment of acquittal; and the consent to search the home was insufficient.

The facts of the case are largely uncontested. On June 21, 2015, Appellant was living with his wife, Melanie Miller ("Ms. Miller"). Appellant and Ms. Miller were in the middle of a divorce, and while they no longer slept in the same room, they continued to live together. During a family gathering, Ms. Miller became intoxicated and as a result "passed out" in the backyard. Ms. Miller's adult daughters sat her in a chair inside the kitchen of the home, where Ms. Miller continued to sleep. Subsequently, Appellant carried Ms. Miller into her adjoining bedroom, locking the door behind him. Ms. Miller's daughter, Shecoya Pope ("Ms. Pope") tried to get inside the bedroom, but Appellant refused to open the door. As a result, Ms. Pope called 911. When law enforcement arrived, Appellant refused to let them enter the bedroom, speaking to them through a window instead. Appellant told law enforcement that Ms. Miller was sleeping. After several failed attempts to persuade Appellant to let them into the bedroom, law enforcement performed a forced entry and subsequently detained Appellant.

STANDARD OF REVIEW

Whether a possible discovery violation exists such that a *Richardson*[1] hearing is required is reviewed *de novo*. *Robinson v. State*, 198 So. 3d 1088, 1092 (Fla. 4th DCA 2016). However, where a defendant fails to timely object to a discovery violation or to request a *Richardson* hearing, the defendant does not preserve the point for appellate review. *Major v. State*, 979 So. 2d 243, 244 (Fla. 3d DCA 2007).

Appellate courts "independently review mixed questions of law and fact that ultimately determine constitutional issues arising from the Fourth Amendment." *State v. Smith*, 172 So. 3d 993, 996 (Fla. 1st DCA 2015) (quoting *Cox v. State*, 975 So. 2d 1163, 1166 (Fla. 1st DCA 2008)). Findings of fact are reviewed for competent, substantial supporting evidence, and legal conclusions drawn from the facts are reviewed *de novo*. *Id.*

A trial court is accorded broad discretion in formulating appropriate jury instructions and its decision "should not be reversed unless the error complained of resulted in a miscarriage of justice or the instruction was reasonably calculated to confuse or mislead the jury." *Premier Lab Supply, Inc. v. Chemplex Indus., Inc.*, 94 So. 3d 640, 644 (Fla. 4th DCA 2012) (internal citations omitted). A party asserting that it was entitled to a particular

[1] *Richardson v. State*, 246 So. 2d 771, 774 (Fla. 1971).

jury instruction must demonstrate that "(1) the requested instruction accurately states the law applicable to the facts of the case; (2) the testimony and other evidence presented support the giving of the instruction; and (3) the instruction was necessary to resolve the issues in the case properly." *Id.*

The Court reviews a trial court's order on a motion for judgment of acquittal pursuant to a *de novo* standard of review. *Pagan v. State*, 830 So. 2d 792, 803 (Fla. 2002). "The purpose of a motion for judgment of acquittal is to challenge the legal sufficiency of the evidence." *Anderson v. State*, 504 So. 2d 1270, 1271 (Fla. 1st DCA 1986). If "the State has brought forth competent evidence to support every element of the crime, a judgment of acquittal is not proper." *Id.* "When a defendant moves for judgment of acquittal, he admits all facts in evidence adduced and every conclusion favorable to the State reasonably inferable therefrom." *Id.*

LAW AND ANALYSIS

Appellant contends that the jury verdict must be reversed because the State committed a discovery violation in failing to timely disclose Ms. Miller as a witness. While this claim is unfounded, the Court need not reach a determination on the merits. Where a defendant fails to timely object to a discovery violation or to request a *Richardson* hearing, the defendant does not preserve the point for appellate review. *Major*, 979 So. 2d at 244. In the instant case, Appellant did not object to Ms. Miller's appearance at trial, nor did he request such a hearing. Appellant is therefore prohibited from raising the issue now.

Appellant next argues that the officers lacked the legal basis necessary to justify their intrusion into the bedroom. However, the law enforcement officers' articulable belief that exigent circumstances were present enabled them to enter. *Riggs v. State*, 918 So. 2d 274, 280 (Fla. 2005) (holding that an exception to the warrant requirement exists for the sort of emergency or dangerous situation, described as "exigent circumstances"). Their belief was based on the information that they obtained from Ms. Pope, as well as what they observed at the scene. Ms. Pope testified that Appellant carried an unconscious Ms. Miller into the bedroom, and that Ms. Pope heard Ms. Miller moaning and yelling for Appellant to "get off [her]" and that he was hurting her. Further, while on the property, the deputies observed Ms. Miller lying face down and motionless inside of the locked

bedroom. Appellant contends that "the 'emergency exception' permits police to enter and investigate private premises to preserve life ... or render first aid, provided they do not enter with an accompanying intent either to arrest or search." *Riggs*, 918 So. 2d at 280 (quoting *Hornblower v. State*, 351 So. 2d 716 (Fla.1977)). In *Hornblower*, however, the law enforcement officer's own testimony acknowledged that he intended to enter and search the defendant's trailer for drugs before he ever approached the mobile home in question. *Hornblower*, 351 So. 2d at 718. This is in stark contrast to the present case.

The deputies' presence in the home was justified by exigent circumstances, it is irrelevant whether they detained Appellant after entering the bedroom. Appellant has not demonstrated that the verdict should be disturbed.

The court did not err in refusing to give any special jury instructions to resisting arrest without violence. Appellant was charged with obstructing or resisting an officer without violence, and not "resisting arrest" as Appellant claims. Therefore, such an instruction would have been improper.

Furthermore, the court did not err in refusing to grant Appellant an acquittal. Appellee correctly argues that the testimony before the court does not support an acquittal. When an Appellant moves for an acquittal, he admits the facts adduced in evidence and every conclusion favorable to the Appellee that is fairly and reasonably inferable therefrom. *Spinkellink v. State*, 313 So. 2d 666, 670 (Fla. 1975), cert. denied, 428 U.S. 911 (1976). Ms. Miller was unconscious, and carried into the bedroom by Appellant. While inside, Ms. Miller was groaning and telling Appellant to get off of her and that Appellant was hurting her. Law enforcement testified that they could see Ms. Miller face down and motionless. Further, they testified that they had a serious concern for her well-being and were attempting to conduct a welfare check on her. Contrary to Appellant's claims, there is competent evidence to deny Appellant's request. *Anderson*, 504 So. 2d at 1271.

Lastly, Appellant claims that Ms. Pope, acting as a third party, did not have the authority to consent to a search of the home. In this case, the sufficiency of consent is irrelevant, and does not demonstrate error by the trial court. The officers entered the dwelling not based on consent, but instead, upon a feared emergency situation. "[A]uthorities may enter a private dwelling based on a reasonable fear of a medical

emergency. In those limited circumstances, the sanctity of human life becomes more important than the sanctity of the home." *Riggs*, 918 So. 2d at 281. Appellee properly claims that consent is not required when there are exigent circumstances, as was the case here.

CONCLUSION

The trial court's rulings were not in error. The jury's verdict will remain undisturbed. The order of the trial court is affirmed.

It is ORDERED AND ADJUDGED that the order of the trial court is hereby AFFIRMED.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida on this ____ day of March, 2017.

Original Order Entered on March 10, 2017, by Circuit Judges Daniel D. Diskey, Linda Babb, and Kimberly Campbell.

Copies to:

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Honorable William Sestak