

Case: Nieves v. State, 44 F.L.W. D1989 (Fla. 2d DCA)

Date: August 2, 2019

Subject: Resisting an Officer without Violence - Lawful Execution of a Legal Duty

FACTS: Officers responded to a domestic violence incident at a motel room that Nieves shared with his girlfriend. At the time, Nieves was on probation. An officer spoke to the victim and based on their conversation, decided to arrest Nieves for domestic battery. The responding officers told Nieves that he was going to be arrested for domestic battery through an open window to the motel room. Nieves refused to come out of the room. Instead, he barricaded himself by placing a bed behind the locked door. The hotel manager gave the police a key to the motel room; however, they were unable to enter because of the bed. Officers removed the screen from the open window, grabbed Nieves, and pulled him out through the window. Nieves struggled with the officers as they attempted to handcuff him, but they ultimately took him into custody. One of the conditions of Nieves' probation was to "live without violating any law." After his arrest, the State filed an affidavit of violation of probation alleging that Nieves violated that condition by committing domestic battery and resisting an officer without violence.

At the violation of probation hearing, Nieves argued the evidence was insufficient to prove that he committed the new law violation of resisting an officer without violence because there was no evidence that the police were in the lawful execution of a legal duty. Specifically, he argued that the police did not have an arrest warrant and no exigent circumstances justified the warrantless entry into the motel room. As a result, grabbing him through the motel-room window violated the Fourth Amendment. The trial court rejected Nieves' argument and found him in violation of his probation for committing the offense of resisting an officer without violence. Nieves appealed.

RULING: The Second District Court of Appeal reversed the finding that Nieves committed the offense of resisting an officer without violence and held that the police officers were not engaged in the lawful execution of a legal duty when they arrested Nieves.

DISCUSSION: The appellate court first analyzed whether the warrantless arrest of Nieves was lawful. It is unlawful for the police to make a warrantless entry into a place protected by the Fourth Amendment for the purpose of arresting a suspect unless an exception to the warrant requirement applies. Payton v. New York, 445 U.S. 573, 576 (1980). There was no dispute that the motel room Nieves barricaded himself in was protected by the Fourth Amendment; therefore, the warrantless arrest could only be lawful if an exception to the warrant requirement applied. The State argued that the exigency exception applied. That exception is generally triggered when the police have an urgent need to address an emergency, such as threat to the safety of persons or property, a reasonable concern the suspect may flee, or a reasonable concern that evidence may be destroyed. The Court rejected the State's argument because the victim was out of the motel room and safe from Nieves when the police pulled him from the window, there was no testimony that the police believed Nieves to be a danger to them or anyone else, no testimony that the police believed Nieves was going to flee (or the ability to flee), or that there was any evidence related to the domestic battery that he could destroy. The Court then concluded that Nieves' arrest was unlawful. Next, the appellate court considered whether Nieves' unlawful arrest negated the State's proof that the police were involving in the lawful execution of a legal duty. In concluding that it did, the appellate court relied on well-settled Florida law that the State cannot prove that the police are in the lawful execution of a legal duty when they arrest a suspect if the arrest itself is executed unlawfully. Johnson v. State, 395 So.3d 594 (Fla. 2d DCA 1981); D.L.S. v. State, 192 So.3d 1273 (Fla. 2d DCA 2016); Norton v. State, 691 So. 3d 616 (Fla. 5th DCA 1997).

COMMENT: This ruling applies to when the police are making a *warrantless arrest* of a suspect. An arrest warrant comes with the implicit authority to enter a suspect's home when there is reason to believe the suspect is inside.

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Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.