

FLORIDA CASE LAW UPDATE 14-06

Case: Scott v. State, 39 FLW D2458b (Fla. 4th DCA)

Date: November 26, 2014

Subject: Individual who, after being detained by officers, entered residence, locked the front door, and ran out the back of the building while waiting for the officers to confirm his identity was not guilty of Resisting without Violence, where his original detention by the officers was deemed illegal

FACTS: Two officers were conducting surveillance of a residence for the purpose of executing an arrest warrant on someone named R.Q. During the surveillance, Scott exited the residence. The officers approached Scott, at which time he denied being R.Q., and provided them with his name. The officers were unable to confirm his identity via computer check, so Scott invited them into the residence while he looked for his ID. He was unable to locate it, and he and the officers returned outside. The officers asked Scott to sit on the porch while they continued their efforts to confirm his identity. A few minutes later, Scott walked back into the house, locked the door, and exited through the rear of the residence. The officers saw Scott jump the back fence and attempt to flee, but he was caught and arrested for Resisting an Officer without Violence (it was later established that he was not the person named in the arrest warrant). At trial, the defendant moved for a judgment of acquittal (JOA), arguing that his interaction with the officers constituted a consensual encounter, and therefore he had the right to end it however and whenever he wanted. The court denied the motion, and Scott was convicted. This appeal ensued.

RULING: The Fourth District Court of Appeal held that while fleeing a valid investigatory stop could support a resisting charge, the interaction with the defendant in this case did not constitute a valid detention. The trial court was reversed, and the JOA was granted.

DISCUSSION: The appellate court explained that this case came down to whether the officers were engaged in a valid "Stop and Frisk" of the defendant at the time he fled. Under Florida's Stop and Frisk law, an officer may perform an investigative stop "under circumstances which reasonably indicate that such person has committed, is committing, or is about to commit a crime." Section 901.151(2), Florida Statutes. In determining whether a stop is justified, the courts will look to the totality of the circumstances in each case. The likelihood of criminal activity does not rise to probable cause, or even a preponderance of the evidence; however, it must be based on commonsense judgments and inferences about human behavior. *State v. Lewis*, 98 So.3d 89 (Fla. 4th DCA 2012). In the present case, the 4th DCA agreed with the holding in *Rios v. State*, 975 So.2d 488 (Fla. 2d DCA 2007), wherein the 2d DCA found that the investigative detention of a man at a residence where officers were attempting to execute an arrest warrant was invalid, where the officers could not articulate facts to establish that the man was, had been, or was about to engage in any criminal conduct. As stated by the court in *Rios*, an arrest warrant "supplies the officers with probable cause to arrest the person it names and describes, not a license to duck the reasonable suspicion requirement and stop someone they only have a subjective hunch is that person." *Id.* at 491.

COMMENTS: The court indicates that the result in this case may have been different had the testimony at trial established that Scott matched the description of R.Q., or that there existed some objective reason to believe that Scott was in fact the person named in the warrant. However, the mere fact that a person is at a residence associated with a suspect with an arrest warrant does not in itself justify an investigative stop of all persons who happen to be at that residence.

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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.