IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,	)	**Supreme Court No. CRA97-20**
	)	**Superior Court No. CM241-96**
Plaintiff-Appellee,	)	
	)	
vs.	)	**OPINION**
	)	
ANTHONY C. FLORES,	)	
	)	
Defendant-Appellant.	)	
	)	

Filed: December 2, 1998

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Appeal from the Superior Court of Guam

Argued and Submitted on 9 October 1998

Hagåtña, Guam

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BEFORE: PETER C. SIGUENZA, Chief Justice; JANET HEALY WEEKS and JOAQUIN C. ARRIOLA, SR., Associate Justices.

WEEKS, J:

[1] Defendant-Appellant Anthony C. Flores appeals the trial court's conviction of the charge of Resisting Arrest (As a Misdemeanor). Upon review of the record, we affirm the holding of the trial court.

I.

[2] On 2 May 1996, Superior Court Marshals Roland E. Okada and Theodoro P. Padua went to a residence believed to be that of Ignacio Flores to serve upon him an arrest warrant. After knocking on the door, the marshals were met by Defendant-Appellant Anthony Flores (Appellant). The marshals identified themselves and announced that they were there to serve a warrant on Ignacio Flores. There was conversation between Appellant and the marshals in which Appellant cursed at the marshals and told them to get off his property. The marshals were subsequently told by Rita Flores, the wife of Ignacio Flores, that Ignacio did not live at the house. One of the marshals believed there to be an active warrant out for Anthony Flores. After verifying that there was an outstanding felony warrant out for Anthony Flores, the marshals called for backup. Upon the arrival of two other marshals, they approached the house again and knocked on the door. Mary Flores, Appellant's sister, came to the door. The marshals asked Mary to call her brother Anthony out to speak with them, that they wished to apologize to him for the earlier exchange of words, which was an attempt to ruse him out of the house. When Appellant would not come out, the marshals entered the residence, amidst shouts from other family members to leave. The marshals then spotted Appellant at the top of a stairway, informed him of the arrest warrant, and advised him that he was

under arrest. Appellant shouted at them to leave and moved further back into the house. A stand-off ensued where Marshal Okada attempted to grab Appellant's arm, and then around the waist, which resulted in Appellant's putting the marshal into a headlock. The marshal was released from the headlock with the assistance of another marshal.

[3] Appellant then positioned himself on the floor in a hallway and tightened up his body in such a way that the marshals were unable to bring his arms behind his back for cuffing. Meanwhile, family members were asking to see a copy of the warrant. The marshals called for a copy of the warrant to be brought to the residence. Approximately thirty minutes later, after being shown a copy of the warrant, Appellant submitted peacefully to the marshals.

[4] On 8 May 1996, Appellant was indicted on two charges: Assault on a Peace Officer (As a 3rd Degree Felony) and Resisting Arrest (As a Misdemeanor). After a bench trial, Appellant was acquitted of the charge of Assault on a Peace Officer (As a 3rd Degree Felony) and found guilty of Resisting Arrest (As a Misdemeanor). Appellant was sentenced to thirty (30) days imprisonment at the Department of Corrections. Sentence was suspended and Appellant was placed on one (1) year probation. Judgment was entered on 8 October 1997. Pursuant to Rule 4(c) of the Rules of Appellate Procedure for the Supreme Court of Guam, Appellant filed an Ex-Parte Motion to Extend Time for Filing Notice of Appeal on 17 November 1997, which was allowed by the court, and Notice of Appeal was filed on that same date.

II.

[5] This court has jurisdiction under 7 GCA §§ 3107 and 3108(a) (1994) and 48 U.S.C. § 1424-

3(d) (1984). Appellant raises the issues of whether the arrest was in violation of 8 GCA § 20.50 (1993), Guam's knock-and-announce statute, and whether the evidence was sufficient to support Appellant's conviction for Resisting Arrest (As a Misdemeanor).

III.

[6] An appellate court reviews the application of the knock-and-announce statute[1] as a question of law subject to *de novo* review. *U.S. v. Contreras-Ceballos*, 999 F.2d 432, 434 (9th Cir. 1993) (citing *U.S. v. Ramos*, 923 F.2d 1346, 1355 (9th Cir. 1991)). The court's factual findings, however, are reviewed for clear error. *Id.* When a criminal defendant asserts that there is insufficient evidence to sustain the conviction, this court reviews the evidence in the light most favorable to the prosecution to ascertain whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Gill*, Crim. No. 92-00099A, 1994 WL 150934, at *6 (D. Guam App. Div. April 15, 1994)(citing *U.S. v. Necoechea*, 986 F.2d 1273 (9th Cir. 1993)),

[1]Guam's knock-and-announce statute is derived from 18 U.S.C. § 3109 and CAL. PENAL CODE § 844 .

The federal knock-and-announce statute, provides:The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

18 U.S.C. § 3109 (1985).

The California statute reads:

§844. Breaking open door or window to effect arrest; demand for admittance; explanation of purpose.

> To make an arrest, a private person, if the offense is a felony, and in all cases a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing the person to be, after having demanded admittance and explained the purpose for which admittance is desired.

CAL. PENAL CODE § 844 (1985).

aff'd and remanded 613 F.3d 688 (9th Cir. 1995), *cert. den.* 517 U.S. 1167, 116 S.Ct. (1996), *and appeal after remand* 1997 WL 209004 (D. Guam App. Div. April 21, 1997), *aff'd* 129 F.3d 127 (9th Cir. 1997); *see also People v. Cruz,* 1998 Guam 18, ¶ 9 (applying the same test for purposes of a judgment of acquittal). The Ninth Circuit has noted that this is a highly deferential standard. *Id.,* (citing *U.S. v. Rubio-Villareal,* 967 F.2d 294 (9th Cir. 1992) (en banc)).

IV.

[7] Appellant argues that the marshals by their own testimony violated 8 GCA § 20.50(a), which provides:

> **Forced Entry to make Arrest allowed after notice, and Refusal.** (a) To make an arrest, whether with or without a warrant, a peace officer may break open the door or window of any house in which the person to be arrested is, or in which the officer has reasonable cause for believing him to be, if, after giving notice of his authority and purpose, he is refused admittance.

[8] Guam's knock-and-announce statute authorizes a peace officer to break open the door or window of a house where a person to be arrested is or where an officer reasonably believes the person to be, if the officer (1) gives notice of his authority; (2) gives notice of his purpose; and (3) is refused admittance. Appellant asserts that because the marshals did not knock and announce their purpose before entering the residence, the arrest was illegal. The trial court made no specific finding on this issue in its Decision and Order, although it stated in its ruling from the bench on 15 May 1997: "We may have some other comments to the Marshal's Office as to how they proceed in the future. The law does provide for a violation of the statute, whether it is a legal or an illegal arrest." According to Appellant, had the marshals followed proper procedure, the "crime" would not have

occurred, as evidenced by the Appellant's peaceful submission to the marshals once the arrest warrant was presented to him inside the residence.

[9] The facts here indicate that the marshals gave notice of their authority, but entered the house before giving Appellant notice of their purpose. It also appears that the marshals entered the residence only after the door was opened by Appellant's sister and Appellant refused to come out. In *U.S. v. Contreras-Ceballos,* 999 F.2d 432 (9th Cir. 1993), the court held that the federal knock-and-announce statute is not implicated by a law enforcement officer's use of a ruse to gain admittance because it entails no breaking. *Id.* at 435. In that case, the officers announced their authority and purpose when the defendant opened the door. Here, the marshals also used a ruse in an attempt to get Appellant to come to the door, entering the residence and thereafter announcing their purpose only after Appellant's sister opened the door and Appellant refused to appear.

[10] However, other cases define "entry" as including the passage through an open door, *People v. Keogh,* 46 Cal. App. 3d 919, 927, 120 Cal. Rptr. 817, 821 (1975); or define "breaking" within the meaning of the statute as occurring when officers enter through an open door. *People v. Hayko,* 7 Cal. App. 3d 604, 607, 86 Cal. Rptr. 726, 728 (1970)(holding on other grounds limited by *People v. Hayko*, 7 Cal.App.3d 437, 444, 272 Cal.Rptr. 613, 617 (1990). "'Breaking' includes uninvited entries through open doors, even where the door is opened in response to a police officer's knock, or when an officer forcibly widens the opening of a partially closed door." *People v. Baldwin,* 62 Cal. App. 3d 727, 739-40, 133 Cal. Rptr. 427, 437 (1976)(citations omitted). In this case, we think a "breaking" occurred within the meaning of the statute.

[11] The seminal case of *Payton v. New York,* 445 U.S. 573, 100 S.Ct. 1371 (1980), holds that

the Fourth Amendment of the United States Constitution, applicable to the states through the Fourteenth Amendment, prevents the police from making a nonconsensual, warrantless entry into a defendant's residence for the purposes of making an arrest. *Id.* at 576, 100 S.Ct. 1375. Fourth Amendment protections are applicable to Guam through section 1421b(c) of the Organic Act of Guam. 48 U.S.C. § 1421b(c) (1950); *see also People of the Territory of Guam v. Johnson*, 1997 Guam 9, ¶ 4. Here there is no dispute that the marshals made a nonconsensual, warrantless entry into Appellant's residence for the purpose of arresting Appellant. The People have argued neither substantial compliance nor excused noncompliance within the meaning of 8 GCA § 20.50(a). We therefore find that the marshals violated 8 GCA § 20.50(a), Guam's knock-and-announce statute.

9 GCA § 55.35 (1993) provides in relevant part:

> **Resisting Arrest of Self or Others; Defined & Punished.** A person is guilty of a misdemeanor when, with intent to prevent or delay the arrest of himself or another person by one whom he knows or reasonably should know to be a peace officer acting in an official capacity, he prevents or delays that arrest by the use or threat of force or by physical obstruction. . . .

The People argue that resisting arrest is a crime regardless of the legality of the arrest. They contend that 9 GCA § 55.35 is not limited to "lawful" arrest, but that the defendant know that the law enforcement officer is acting in an official capacity. See comment to 9 GCA § 55.35[2]. In this case, Appellant knew that the marshals were acting in an official capacity. They had announced their

[2] The comment to 9 GCA § 55.35(1993) provides in relevant part:

> §55.35 deals specifically with resisting arrest in order to make clear that the arrest need not be lawful. The defendant must know that the law enforcement officer is acting in an official capacity, but if this requirement is satisfied, it is a crime to resist even an unlawful arrest. There are many remedies for such an unlawful arrest - Habeas Corpus, exclusion of illegally obtained evidence, possible tort relief - and it seems preferable to discourage as much violent conduct surrounding police activity as possible.
>
> Note that this Section also proscribes resistance or obstruction, including "going limp," but does not deal with flight from arrest. . . .

presence outside of the residence and had announced their authority once they gained entry. The People further urge that strong policy reasons prohibit the resistance of arrest under any circumstances, lawful or unlawful.

[12] We concur with the People's position. In *Pittman v. Superior Court of Los Angeles County*, 256 Cal.App.2d 795, 64 Cal. Rptr. 473 (Cal. Ct. App. 1967), the court found that even if the arrest by police was unlawful, it did not justify or excuse an assault upon arresting officers. The *Pittman* court stated: "The remedy for improper police conduct is in the courts, not in private reprisal." *Id.* at 797, 64 Cal.Rptr. at 475.

[13] In *State v. Miskimins*, 435 N.W.2d 217 (S.D. 1989), police officers had not fully complied with the statute authorizing entry into a dwelling without a search warrant. Defendant held a loaded shotgun to the officer's head and threatened to kill him after the officer's entry. In holding that the initial taint of the illegal entry was dissipated by circumstances independent of the primary illegality, the court stated:

> To rule otherwise would allow a defendant carte blanche authority to go on whatever criminal rampage he desired and do so with virtual legal impunity as long as such actions stemmed from the chain of causation started by the police misconduct, be it minor or major. . . . 'This result is too far reaching and too high a price for society to pay in order to deter police misconduct.'

Id. at 221. (citations omitted).

[14] The *Miskimins* court's view is that the balance between Fourth Amendment protections of the sanctity of the home and police misconduct turns on whether the chain of causation is broken by an independent act of a defendant. *Id.* at 222. If we adopt the *Miskimins* analysis, in this case, the chain of causation of the marshals' illegal entry was broken by Appellant's resistance to the arrest.

But short of an unjustified bodily attack, we think that even an illegal arrest does not justify its resistance, particularly when relief such as habeas corpus, exclusion of illegally obtained evidence, or possible tort relief may be had in our courts. Our interpretation of 9 GCA § 55.35, therefore, is not strictly limited to lawful arrests.

[15] Appellant further contends that his conviction for resisting arrest is not sufficiently supported by the evidence, asserting that after Appellant's initial confrontation,[3] he merely "passively resisted" the marshals by tensing his arms. We disagree. We find that the record reveals more than a "passive resistance" of Appellant's confrontation with the marshals. The testimony of three Superior Court Marshals includes evidence of Appellant's confrontational behavior and struggle with the marshals in an effort to avoid being placed in handcuffs. Even disregarding the evidence of the headlock (for which Appellant was acquitted of the charge of assault), Appellant positioned himself on the floor against the wall and tensed his body in such a way and with enough force that the marshals were unable to handcuff Appellant and to effect his arrest. This tensing or stiffening of Appellant's body amounts to more than mere passive resistance. Appellant's use of his body in this fashion to delay the arrest constitutes sufficient evidence of actively resisting arrest.

V.

[16] The marshals violated 8 GCA § 20.50(a). Despite this illegality, based upon our interpretation of 9 GCA § 55.35, Appellant's remedy was not in resisting the arrest. We further find that substantial evidence in the record exists to uphold Appellant's conviction on the charge of

[3]The "initial confrontation", for which Appellant was charged with Assault (As a 3rd Degree Felony), resulted in an acquittal for Appellant.

Resisting Arrest (As a Misdemeanor). The holding of the trial court is **AFFIRMED**.

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PETER C. SIGUENZA
Chief Justice

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JANET HEALY WEEKS
Associate Justice

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JOAQUIN C. ARRIOLA
Associate Justice