2022 IL App (2d) 210359-U
No. 2-21-0359
Order filed May 12, 2022

NOTICE: This order was filed under Supreme Court Rule 23(b) and is not precedent except in the limited circumstances allowed under Rule 23(e)(l).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 18-CM-2420
BRYCE R. ELLIOTT,	)	Honorable Paul A. Marchese,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Bridges and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: We reversed defendant's conviction of resisting or obstructing a peace officer based on his noncompliance with an officer's order to exit his garage so that the officer could effectuate a traffic stop for a speeding offense that the officer had witnessed but the officer had not been in hot pursuit of defendant prior to defendant's arrival at his home. As the officer lacked authority to enter the home under the circumstances, he had no authority to order defendant out of the home.

¶ 2 Following a bench trial, defendant, Bryce R. Elliott, was convicted of resisting or obstructing a peace officer (720 ILCS 5/31-1(a) (West 2018)) and speeding (625 ILCS 5/11-601(b) (West 2018)). On appeal, he contends that he was not proved guilty beyond a reasonable doubt of resisting or obstructing because the officer was not engaged in an authorized act when he directed

defendant to exit his garage so that the officer could effectuate a traffic stop. We reverse defendant's conviction of resisting or obstructing.

¶ 3 I. BACKGROUND

¶ 4 Based on an October 27, 2018, incident, defendant was issued citations for resisting or obstructing, speeding, and operating an uninsured vehicle (*id.* § 3-707). He was later charged by information with the same offenses. The charge of resisting or obstructing alleged that defendant

> "knowingly resisted or obstructed the performance of Sergeant Krakow of an authorized act within his official capacity, being the investigation of a traffic offense, knowing Sergeant Krakow to be a peace officer engaged in the execution of his official duties, in that he refused to exit his garage and closed the garage door."

¶ 5 The only witnesses at trial were Naperville police sergeant Ricky Krakow and defendant. Sergeant Krakow testified that, on October 27, 2018, he was patrolling downtown Naperville when he saw a red car traveling at a high rate of speed in the opposite direction. He turned around to follow but did not activate his lights or siren. Radar showed the car traveling at 39 miles per hour in a 25 mile-per-hour zone.

¶ 6 Krakow followed the red car on a circuitous route until they came to a stop sign at Chicago Avenue and Sleight Street. The red car made a left turn. Krakow had to wait for other vehicles to clear the intersection before following. As he turned left, the red car made a left turn into a driveway. Krakow pulled partway into the driveway and shined his spotlight as the red car proceeded into the open garage.

¶ 7 Krakow approached the vehicle and yelled, " '[H]ey,' " because the garage door was beginning to close. He quickly walked up to the garage door and placed his foot in the path of the safety beam. The door went back up and Krakow identified himself as a Naperville police officer.

¶ 8 Krakow told the driver, whom he identified as defendant, to come out of the garage. Defendant asked why he would come out of the garage. Krakow replied, " '[B]ecause I'm on a traffic stop with you.' " Defendant replied, " '[N]ot anymore.' "

¶ 9 There followed another conversation during which defendant repeatedly insisted that he knew Krakow, which the latter denied. Krakow explained that if defendant did not come out of the garage, Krakow would get a warrant for his arrest.

¶ 10 Defendant was standing in his garage at the time. Eventually, he closed the garage door and went into the house. Krakow did obtain a warrant and ultimately issued defendant citations.

¶ 11 Defendant testified that the first time he was aware of Krakow's presence was when he stopped the garage door from closing. He had not seen him approach or heard him yell, " '[H]ey' "; thus, he was surprised to find someone at his garage door.

¶ 12 Defendant coached the children of several Naperville police officers and initially mistook Krakow for another officer. He asked whether Ken Gettemy was the commander on duty that night. Defendant did not believe that he was speeding, and he would have "trusted Ken in the situation." He "didn't particularly trust the officer right then," because he "thought he was crazy."

¶ 13 Defendant was in pain from having a tooth removed. He wanted to go inside and call Gettemy because he "would feel safe around him." On cross-examination, defendant said that he closed the garage door a second time because Krakow told him to call Gettemy, which he did.

¶ 14 The court found defendant guilty of obstructing and speeding and sentenced him to 12 months' conditional discharge. After his motion to reconsider was denied, defendant timely appealed.

¶ 15 II. ANALYSIS

¶ 16 Defendant argues that he was not proved guilty beyond a reasonable doubt of resisting or obstructing, because Krakow's ordering defendant out of his home so that Krakow could effectuate a traffic stop was an unauthorized act in view of constitutional protections.

¶ 17 When a defendant challenges the sufficiency of the evidence supporting his conviction, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Section 31-1(a) of the Criminal Code of 2012, under which defendant was convicted, provides as follows:

> "A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer *** of any authorized act within his or her official capacity commits a Class A misdemeanor." 720 ILCS 5/31-1(a) (West 2018).

¶ 18 Defendant contends that Krakow was not authorized to enter his home to effectuate a routine traffic stop or, by extension, to order defendant out of the home for that same purpose. The State responds that, because the traffic stop was proper—*i.e.*, Krakow had reasonable grounds to believe that defendant had committed a traffic violation—the traffic stop in its entirety was an authorized act that defendant was not privileged to resist.

¶ 19 The physical entry of the home is the "chief evil" against which the fourth amendment is directed. *People v. Koniecki*, 135 Ill. App. 3d 394, 398 (1985). A principal protection against unnecessary intrusions into private dwellings is the warrant requirement. *Id.* Thus, the fourth amendment prohibits warrantless arrests in the home, except for felony arrests where there is both probable cause *and* exigent circumstances. *Id.* (citing *Payton v. New York*, 445 U.S. 573, 576 (1980)); see also *People v. Schreiner*, 2021 IL App (1st) 190191, ¶ 63.

> "[F]actors *** relevant to a determination of exigency in circumstances involving warrantless entry into a private residence to effectuate an arrest include whether: (1) the crime under investigation was recently committed; (2) there was any deliberate or unjustified delay by the police during which time a warrant could have been obtained; (3) a grave offense was involved, particularly a crime of violence; (4) there was reasonable belief that the suspect was armed; (5) the police officers were acting on a clear showing of probable cause; (6) there was a likelihood that the suspect would escape if he was not swiftly apprehended; (7) there was strong reason to believe the suspect was in the premises; and (8) the police entry was made peaceably, albeit nonconsensually [citation]." *People v. McNeal*, 175 Ill. 2d 335, 345 (1997).

Exigent circumstances justifying a warrantless entry into a home for a *search* include the need to (1) provide emergency assistance to an occupant of a home, (2) engage in "hot pursuit" of a fleeing suspect, (3) enter a burning building to put out a fire and investigate its cause, and (4) prevent the imminent destruction of evidence. *Missouri v. McNeely*, 569 U.S. 141, 149 (2013). Recently, in *Lange v. California*, ___ U.S. ___, 141 S. Ct. 2011 (2021), the United States Supreme Court clarified the scope of the "hot pursuit" exception. The exception generally (if not presumptively) applies to felony suspects, but its application to misdemeanor suspects is determined on a case-by-case review of "whether there is a law enforcement emergency." *Lange*, ___ U.S. at ___, 141 S. Ct. at 2023-24. *Lange* overruled *People v. Wear,* 229 Ill. 2d 545 (2008), which the Court construed as adopting the "categorical rule" that "the Fourth Amendment always permits an officer to enter a home without a warrant in pursuit of a fleeing misdemeanor suspect." *Lange*, ___ U.S. at ___, 141 S. Ct. at 2017 n.1. We wish to emphasize that this is not a case where the hot-pursuit exception

applies, as Krakow did not activate his overhead lights or siren and waited for other vehicles to pass before pursuing defendant.

¶ 20 There is no question that Krakow did not intend to arrest defendant when he initially approached the garage. Additionally, the evidence revealed that defendant was not aware of the officer's presence until after defendant entered his garage and was closing the garage door. When defendant asked Krakow why he wanted him to come out, the latter replied, " '[B]ecause I'm on a traffic stop with you.' " In any event, assuming that Illinois law somehow permitted an arrest for a noncriminal speeding violation, the fourth amendment would not have permitted Krakow to enter the home without a warrant, absent exigent circumstances which did not exist here. See *Koniecki*, 135 Ill. App. 3d at 398 (citing *Payton*, 445 U.S. at 576).[1] When Krakow interfered with the garage door closing, he had entered the curtilage of defendant's home and exceeded the scope of the implied license to come onto defendant's property for a limited purpose and duration. See *Florida v. Jardines*, 569 U.S. 1, 8-9 (2013) (recognizing an implied license that "typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave"; this license permits a police officer to do whatever an ordinary visitor would do and does not encompass a warrantless dog sniff of the front porch); *People v. Bessler*, 191 Ill. App. 3d 374, 379 (1989) (officer's peering into the garage within the curtilage of defendant's home without a warrant and not under some recognized exception to the warrant requirement violated defendant's fourth amendment rights). As Krakow was not in hot

[1] If an officer cannot enter a home even to effectuate a felony arrest without either (1) a warrant or (2) probable cause plus exigent circumstances, it follows that he cannot make a warrantless entry to complete a routine traffic stop. *Cf. Welsh v. Wisconsin*, 466 U.S. 740, 748-49 (1984).

pursuit and there were no other exigent circumstances present, Krakow's attempted entry into defendant's home was not lawful.[2] Moreover, if Krakow could not lawfully invade the sanctity of defendant's home, he could not lawfully order defendant to abandon that sanctity. Because Krakow's order was not an authorized act, defendant could not be convicted under section 31-1(a) for disobeying it.

¶ 21 Our conclusion that Officer Krakow could not lawfully enter defendant's home or order defendant to leave it under the circumstances in the case is supported by the case law defendant cites. In *People v. Hilgenberg*, 223 Ill. App. 3d 286 (1991), the trial court dismissed a criminal complaint alleging that the defendants obstructed the police investigation of underage drinking by refusing to open the door to permit the officer's entry. *Id.* at 287-88. We noted that the complaint had to allege the authorized act the officer was performing and the physical act that constituted resisting or obstructing. *Id.* at 289. We affirmed the dismissal, stating:

> "Alleging 'an official police investigation' does not constitute an 'authorized' act requiring defendants to open the door or permit the entry of the officer onto the premises. Absent specific factual allegations that the officer was acting on the basis of a warrant, or probable cause to arrest coupled with exigent circumstances, the complaint does not state an offense." *Id.* at 294.

¶ 22 In *People v. Cope*, 299 Ill. App. 3d 184 (1998), we reversed the defendant's conviction of resisting or obstructing. The defendant sheltered a teenage runaway in her restaurant while it was closed. When police officers came to the restaurant to retrieve the minor, the defendant refused to open the doors. *Id.* at 186. We noted that the terms " 'resistance' " and " 'obstruct' " implied a

[2] Krakow appeared to recognize his limited authority when he told defendant that if he did not come out of the garage, Krakow would get a warrant.

physical act or exertion and that the complaint must set out what physical act of the defendant constituted resisting or obstructing an officer. *Id.* at 189. Thus, refraining from physical action or failing to cooperate with the police is generally not considered the same as resisting or obstructing an officer. *Id.* For this reason, and also because the police did not have a warrant nor were exigent circumstances present, we held that the defendant did not obstruct an authorized act by refusing to open the door. *Id.* at 189-90.

¶ 23 In *People v. Jones*, 2015 IL App (2d) 130387, an officer went to the defendant's house to investigate a report of possible domestic violence. The officer knocked on the door of an enclosed front porch, where the defendant was arguing with Susanna Guzman. Despite the argument and a report of "things breaking," the officer saw no evidence of violence. *Id.* ¶ 14. The defendant said that there was no problem and asked the officer to leave. Guzman appeared uninjured and did not request assistance. When the defendant began to walk toward the door to the main house, the officer grabbed his arm. The defendant began pulling away, so the officer took him to the ground. The defendant then began kicking the officer repeatedly. We affirmed the defendant's conviction of aggravated battery to a police officer but reversed his conviction of resisting or obstructing. We held that, while the officer "was undoubtedly authorized to conduct some initial investigation," when he found no evidence of a crime and neither party to the argument requested his assistance, his authority to remain in the defendant's home ended. *Id.* ¶ 16.

¶ 24 Defendant also cites *Lange*. As noted above, the hot-pursuit exception as articulated in *Lange* does not apply here, where Krakow never activated his lights or siren and did not announce the traffic stop until defendant was already in the garage.

¶ 25 The State's contention that the traffic stop was valid and, thus, defendant could not resist any action taken in furtherance of the stop, finds no support in the case law. Undoubtedly the

police in *Hilgenberg* were generally "authorized" to investigate the report of underage drinking, but the fourth amendment did not permit them to enter the apartment without (1) a warrant or (2) probable cause coupled with exigent circumstances. Similarly, the officers in *Cope* were generally "authorized" to retrieve the runaway, but the fourth amendment did not permit them to order the defendant to open the door to the restaurant. We expressly noted in *Jones* that the initial investigation was "authorized," but, when the officer found no evidence of a crime and neither party to the argument requested assistance, the officer's continued presence violated the fourth amendment.

¶ 26 The parties appear to dispute when the traffic stop began and when defendant became aware of Krakow's presence. Krakow's testimony suggests that defendant's car was at least partly in the garage before Krakow announced the traffic stop by activating his spotlight (moreover, simply illuminating an individual does not effectuate a seizure (see *People v. Luedemann*, 222 Ill. 2d 530, 560-61 (2006)). Relatedly, the State emphasizes that "Sergeant Krakow never entered Defendant's garage or home in an attempt to effectuate an arrest." Aside from the fact that Krakow placed his foot partially inside the garage to stop the door from closing, he ordered defendant out of the garage to accomplish the same purpose. Defendant was charged with resisting or obstructing in that he "refused to exit his garage and closed the garage door." Krakow could not—just to effectuate a minor traffic stop—open the garage door himself or order defendant to do so and exit the garage. The State cites no case holding that a police officer may circumvent the fourth amendment's warrant requirement by the simple expedience of ordering a defendant out of his house to be arrested (or ticketed) rather than going in themselves. The fourth amendment would be a flimsy bulwark if it could be so easily evaded.

¶ 27 The State attempts to distinguish *Hilgenberg*, *Cope*, *Jones*, and *Lange*, but to no avail. The State appears to argue that, unlike in *Hilgenberg*, *Cope*, and *Jones*, Krakow had "probable cause" to believe that defendant was guilty of speeding. However, as noted, probable cause alone does not excuse the need for a warrant.

¶ 28 The State points out that *Lange* held that, when an officer has time to get a warrant, he must do so (*Lange*, ___ U.S. at ___, 141 S. Ct. at 2024) and that "[t]his is exactly what Sergeant Krakow did." However, Krakow did so only after his warrantless attempts to enter the garage and then ordering defendant to exit. It was these unlawful, warrantless attempts that defendant resisted. Obtaining a warrant did not retroactively validate these initial, unauthorized acts.

¶ 29 *People v. Synnott*, 349 Ill. App. 3d 223 (2004), which the State cites, is clearly distinguishable. There, the defendant was convicted of resisting or obstructing after he refused to obey an officer's repeated commands to exit his vehicle during a traffic stop that had already been effectuated, which is not the case here. Notably, an automobile is not subject to the same degree of fourth-amendment protection as a home (see *Redwood v. Lierman*, 331 Ill. App. 3d 1073, 1082 (2002) (citing *South Dakota v. Opperman*, 428 U.S. 364, 367 (1976)), and *Synnott* expressly noted that an officer is authorized to order a driver out of a vehicle during a traffic stop. *Synnott*, 349 Ill. App. 3d at 228 (citing *Maryland v. Wilson*, 519 U.S. 408 (1997)).

¶ 30 We conclude that the State did not prove defendant guilty beyond a reasonable doubt of resisting or obstructing an authorized act by a peace officer. Defendant does not challenge his speeding conviction.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we reverse the judgment of the circuit court of Du Page County.

¶ 33 Reversed.