

IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA

KEVIN MICHAEL CLAY,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

APPELLATE CASE NO: 2013-AP-19-A-O
Lower Case No. 2013-MM-29-A-E

Appeal from the County Court
for Orange County, Florida
A. James Craner, County Court Judge

Robert Wesley, Public Defender
and Alyssa Salman, Assistant Public Defender
for Appellant

Jeffrey Ashton, State Attorney
and Austin Price, Assistant State Attorney
for Appellee

Before TURNER, WHITEHEAD, DAWSON

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Appellant seeks review of his conviction for resisting an officer without violence. He contends that the trial court committed error in denying his motion in limine and his motion for judgment of acquittal.

A trial court's ruling on a motion in limine is reviewed under an abuse of discretion standard. *Reeves v. State*, 987 So. 2d 103, 108 (Fla. 5th DCA 2008). Appellant sought to exclude evidence regarding the use of multiple officers, air support, and a canine to apprehend him. This evidence was relevant to prove a material fact at issue, namely that Appellant had fled and

concealed himself from the officer who had ordered him to stop; it was not more prejudicial than probative. There was no abuse of discretion in the court's denial of the motion in limine.

An order denying a motion for judgment of acquittal is reviewed de novo. Where the State puts forth evidence to establish each element of the crime charged, a motion for judgment of acquittal should be denied. *State v. Odom*, 862 So. 2d 56, 59 (Fla. 2d DCA 2003).

To convict a person of resisting an officer without violence, the State must prove that (1) the officer was engaged in the lawful execution of a legal duty and (2) the defendant's actions obstructed, resisted, or opposed the officer in the performance of that legal duty. *G.T. v. State*, 120 So. 3d 141, 143 (Fla. 4th DCA 2013). Where flight is the alleged act of resisting, there must be evidence that the defendant knew the officer was attempting to detain him. *Robinson v. State*, 667 So. 2d 384, 386 (Fla. 1st DCA 1995).

The officer who attempted the arrest testified that he had probable cause to arrest. He also said that he was dressed in full uniform when he ordered Appellant to stop, and that Appellant did not obey the command but instead ran off. This testimony covered every element of resisting without violence and the motion for judgment of acquittal was properly denied.

**IT IS THEREFORE ORDERED AND ADJUDGED that the judgment is
AFFIRMED.**

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 5th
day of February, 2014

/S/
THOMAS W. TURNER
Presiding Circuit Judge

WHITEHEAD and DAWSON, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **Alyssa Salman**, Assistant Public Defender , asalman@circuit9.org, 435 N Orange Avenue, Suite 400 Orlando, Florida 32801-1526 and to **Austin Price**, Assistant State Attorney, APrice@sao9.org, 415 N. Orange Avenue, Suite. 200, Orlando, Florida 32802-1673 this 6th day of February, 2014.

/S/ _____
Judicial Assistant