

Third District Court of Appeal

State of Florida, January Term, A.D. 2009

Opinion filed July 1, 2009.

Not final until disposition of timely filed motion for rehearing.

No. 3D07-2947

Lower Tribunal No. 04-37303

Marcus Young,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Lawrence A. Schwartz, Judge.

Carlos J. Martinez, Public Defender, and Harvey J. Sepler, Assistant Public Defender, for appellant.

Bill McCollum, Attorney General, and Nikole Hiciano, Assistant Attorney General, for appellee.

Before SUAREZ and SALTER, JJ., and SCHWARTZ, Senior Judge.

SCHWARTZ, Senior Judge.

Notwithstanding a contrary suggestion in ill-advised dicta in *Gaskin v. State*,

869 So. 2d 646, 647 n.1 (Fla. 3d DCA 2004), there is a crime of burglary with intent to commit the underlying offense of resisting without violence, which occurs, as in this case, when a person fleeing from a lawful attempted arrest enters a structure without permission in order to evade capture. See *Jean-Marie v. State*, 947 So. 2d 484 (Fla. 3d DCA 2006); *Nicarry v. State*, 795 So. 2d 1114 (Fla. 5th DCA 2001); *Britton v. State*, 604 So. 2d 1288 (Fla. 2d DCA 1992); *Burton v. State*, 925 A.2d 503 (Del. 2007); *Patrick v. State*, 922 A.2d 415 (Del. 2007); *State v. Williams*, 550 A.2d 1298 (N.J. Super. Ct. App. Div. 1988). Because the evidence supports the jury's finding that the defendant was guilty of that offense – and there is no harmful error – the judgment below is affirmed.