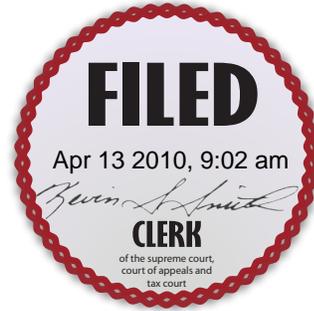


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ASHAUNTI WEBB,)
)
Appellant- Defendant,)
)
vs.) No. 49A04-0909-CR-513
)
STATE OF INDIANA,)
)
Appellee- Plaintiff,)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Dennis Thomas, Judge Pro-Tempore
Cause No. 49F10-0904-CM-38776

April 13, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Ashaunti Webb appeals her conviction, following a bench trial, of resisting law enforcement, a Class A misdemeanor. For our review, Webb raises one issue: whether sufficient evidence supports her conviction. Concluding the evidence is sufficient, we affirm.

Facts and Procedural History

On April 9, 2009, Officer Hoskins of the Indianapolis Metropolitan Police Department observed Webb driving her minivan in a school zone over the posted speed limit. Officer Hoskins activated his vehicle's emergency lights and siren, and Webb pulled over. Officer Hoskins approached and asked Webb for her driver's license and vehicle registration. Webb refused to produce them and asked why she had been stopped. Officer Hoskins again asked Webb for her identification and said he would explain the purpose of the stop after her identification was provided. Webb retrieved her cell phone and called a person she identified as her lawyer. While Webb was on the phone, Officer Hoskins asked her several more times to provide her identification and vehicle registration. Webb did not so do.

Officer Hoskins called for a backup officer, reached through the open window of Webb's van, and unlocked the driver's side door. Officer Hoskins took hold of Webb's left arm in order to remove Webb from the van. Webb grabbed hold of the steering wheel with her right arm and "braced herself against the floor board" of the van by "push[ing] down hard" with her legs. Transcript at 13. Officer Hoskins used his greater weight and strength to "overpower" Webb and pull her out of the van. Id. Officer

Hoskins then tried to handcuff Webb but was unable to position her arms for handcuffing because Webb was “tensing her arms” and trying to pull them away from her torso. Id. at 15. When the backup officer arrived on the scene, Webb relaxed her arms and submitted to being handcuffed.

The State charged Webb with resisting law enforcement, a Class A misdemeanor, and refusal to identify, a Class C misdemeanor. The trial court held a bench trial on August 12, 2009, at the conclusion of which it convicted Webb of both counts and sentenced her to 365 days in jail with all but two days suspended. Webb now appeals her conviction of resisting law enforcement.¹

Discussion and Decision

I. Standard of Review

When reviewing the sufficiency of the evidence to support a criminal conviction, we neither reweigh the evidence nor judge witnesses’ credibility. Wright v. State, 828 N.E.2d 904, 906 (Ind. 2005). Rather, we consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). Therefore, we will affirm the conviction if the probative evidence and reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find all elements of the crime proven beyond a reasonable doubt. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005).

II. Resisting Law Enforcement

To convict Webb of resisting law enforcement, a Class A misdemeanor, the State must prove beyond a reasonable doubt Webb knowingly and forcibly resisted, obstructed,

¹ However, Webb does not challenge her conviction of refusal to identify.

or interfered with Officer Hoskins while Officer Hoskins was lawfully engaged in the execution of his duties. See Ind. Code § 35-44-3-3(a)(1). Webb does not dispute that Officer Hoskins was lawfully engaged in the execution of his duties or that her actions constituted resistance. Rather, Webb contends her actions lacked the element of force, which our supreme court recently addressed in Graham v. State, 903 N.E.2d 963 (Ind. 2009):

This Court’s opinion in Spangler v. State, 607 N.E.2d 720 (Ind. 1993) . . . noted that the word “forcibly” modifies “resists, obstructs, or interferes” and that force is an element of the offense. [Justice DeBruler] explained that one “forcibly resists” when “strong, powerful, violent means are used to evade a law enforcement official’s rightful exercise of his or her duties.” Spangler had refused to accept service of process from an officer, walking away from the officer in the face of demands that he accept a protective order. This Court held that such action was resistance to authority but not forcible resistance. . . .

The force involved need not rise to the level of mayhem. In Johnson v. State, 833 N.E.2d 516, 517 (Ind. Ct. App. 2005), a defendant in custody “pushed away with his shoulders while cursing and yelling” when the officer attempted to search him. As officers attempted to put him into a police vehicle, Johnson “stiffened up” and the police had to get physical in order to put him inside. The Court of Appeals correctly held that Johnson’s actions constituted forcible resistance.

Id. at 965-66 (some citations omitted). Applying this analysis, our supreme court held Graham’s repeated refusal to present his arms for handcuffing did not constitute forcible resistance. Id. at 966. However, the court stated “even ‘stiffening’ of one’s arms when an officer grabs hold to position them for cuffing would suffice” to establish forcible resistance. Id.

Webb’s actions constitute forcible resistance under Graham. When Officer Hoskins took hold of Webb’s left arm, Webb gripped the steering wheel with her right arm and braced her legs against the floor in an attempt to prevent Officer Hoskins from

removing her from the van. Once Webb was removed from the van, she “tens[ed]” and tried to pull back her arms to prevent Officer Hoskins from handcuffing her. Tr. at 15. These actions are equivalent or similar to stiffening one’s arms to avoid handcuffing and “stiffen[ing] up” one’s body to avoid being placed in a police car, which our supreme court in Graham held would support a conviction of forcible resistance. 903 N.E.2d at 966. Therefore, the evidence is sufficient to prove Webb forcibly resisted Officer Hoskins.

Webb argues the evidence is insufficient because

the trial court found Webb’s acts of grabbing onto the steering wheel and “stiffening” her arms when she was handcuffed constituted “passive resistance, passive force against that police officer.” (Tr. 44-45). As a matter of law, “forcible resistance” does not encompass passive actions.

Reply Brief of Appellant at 3. Although Webb is correct that merely passive conduct is insufficient to establish forcible resistance, Webb’s actions of grabbing the steering wheel, bracing her legs, and tensing her arms were not passive. See Guthrie v. State, 720 N.E.2d 7, 9 (Ind. Ct. App. 1999) (affirming conviction because defendant “did resist in some meaningful way that extended beyond mere passive resistance” when he “resisted the officers’ efforts by leaning his body back and stiffening his legs”), trans. denied.

Webb further contends the trial court’s statement it regarded Webb’s actions as passive is a finding of fact or reasonable inference to which, pursuant to our standard of review for sufficiency of the evidence claims, this court must defer. We disagree. The trial court indicated its agreement with the State’s version of the disputed facts, noting Webb did “grab on to a steering wheel” and “tighten up.” Tr. at 44. Further, the trial court noted its understanding that Webb’s use of force was an element of the crime the

State was required to prove, and the trial court found the State met its burden. See id. (“It all boils down to force.”). Thus, in context, the trial court’s statement that Webb’s actions were “passive resistance, passive force,” id. at 45, was more in the nature of dictum than a finding regarding a crucial factual element of Webb’s offense. For the same reasons, this case is distinguishable from Kribs v. State, 917 N.E.2d 1249, 1250 (Ind. Ct. App. 2009), where this court reversed the defendant’s conviction because we would “not second guess” the trial court’s finding the defendant was unaware he possessed a weapon, when such actual knowledge was an element required under the statute. We conclude the State presented sufficient evidence to support Webb’s conviction of forcibly resisting law enforcement.

Conclusion

Sufficient evidence supports Webb’s conviction of forcibly resisting law enforcement. The conviction is therefore affirmed.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.