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IN THE
COURT OF APPEALS OF INDIANA

KIMBERLY L. BENEDICT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1012-CR-1359
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William J. Nelson, Judge
Cause No. 49F07-1007-CM-059426

June 27, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Kimberly L. Benedict appeals her conviction for Class A misdemeanor resisting law enforcement. Benedict contends that there is insufficient evidence to support her conviction because the State failed to prove that she "forcibly" resisted. Concluding that there is sufficient evidence, we affirm.

Facts and Procedural History

In July 2010, Officers John Walters, Gregory Kessie, Daniel Brezik, and Beniam Kumbi of the Indianapolis Metropolitan Police Department were on a foot patrol of Carriage House East Apartments, a high crime area known for gangs and narcotics activities. Upon noticing the fully-uniformed officers, a man later identified as Rashad Pierce discarded something and walked immediately away from them at a quick pace. Before the officers could reach Pierce, he had entered the back door of an apartment. Pierce was in the apartment for only a few seconds before he came back out and met the officers on the back patio.

While the other officers talked with Pierce, Officer Walters walked around and knocked on the front door. A woman later identified as Benedict answered the door. Officer Walters asked Benedict if she knew Pierce, and she replied that he was her nephew. When Officer Walters explained what he and the other officers had observed, Benedict immediately became "very defensive and belligerent." Tr. p. 23. Officer Walters asked if he could search the room that the officers saw Pierce enter, but Benedict declined: "[Y]ou're not coming into my f***ing house without a f***ing warrant." *Id.*

When Officer Walters told Benedict that the other officers were talking with Pierce on the back patio, she spun around, went to her back patio, and yelled at the other officers.

Officer Walters walked around the side of the building to the back patio and saw Benedict emerge from the residence yelling. Multiple officers told her to stop yelling but she ignored them. Officer Walters told her to go inside the residence and told the other officers to take Pierce off the patio and away from Benedict. As the other officers escorted Pierce off the patio, Benedict and Pierce got into a yelling match because Benedict wanted Pierce to give her his cell phone. Officer Walters told Benedict that she was not getting the phone. At that point, Benedict charged from the back patio door toward the officers. She pushed Officers Walters, Kessie, and Brezik. Officer Walters told Benedict that she was causing a disturbance and that she was under arrest. He and Officer Kessie attempted to handcuff her, but she "pull[ed] away" from Officer Walters. *Id.* at 15. She also "tried to spin forcefully and strongly away from [their] grasp, locking her arms to her side." *Id.* at 26. After a brief struggle, the officers were able to place Benedict in handcuffs.

The State charged Benedict with Class A misdemeanor resisting law enforcement, Class A misdemeanor battery on a law enforcement officer, and Class B misdemeanor disorderly conduct. At Benedict's bench trial, all four officers testified for the State. After the State presented its evidence, Benedict moved for involuntary dismissal of all counts. The trial court granted the motion as to the disorderly conduct charge but denied it as to the resisting law enforcement and battery charges. Benedict testified in her own

defense. The trial court found Benedict guilty of resisting law enforcement and not guilty of battery.

Benedict now appeals.

Discussion and Decision

Benedict contends that there is insufficient evidence to support her conviction for resisting law enforcement because the State failed to prove that she "forcibly" resisted.

Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this Court does not reweigh the evidence or judge the credibility of the witnesses. *Bond v. State*, 925 N.E.2d 773, 781 (Ind. Ct. App. 2010), *reh'g denied*, *trans. denied*. We consider only the evidence most favorable to the judgment and the reasonable inferences drawn therefrom and affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* Reversal is appropriate only when reasonable people would not be able to form inferences as to each material element of the offense. *Id.*

To convict Benedict of Class A misdemeanor resisting law enforcement as charged here, the State had to prove that she knowingly or intentionally forcibly resisted, obstructed, or interfered with Officer Walters and/or Officer Kessie while the officer was lawfully engaged in the execution of his duties. Appellant's App. p. 14; *see also* Ind. Code § 35-44-3-3(a)(1). Benedict challenges only the sufficiency of the evidence on the force element.

Our Supreme Court has addressed the evidence needed to support the force element of resisting law enforcement in *Graham v. State*, 903 N.E.2d 963 (Ind. 2009).

There, the Court cited one of its earlier opinions and explained that a person forcibly resists law enforcement when strong, powerful, violent means are used to evade a law enforcement official's rightful exercise of his or her duties. *Id.* at 965 (citing *Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993)). The *Graham* Court noted that the force involved need not rise to the level of mayhem. *Id.* It cited *Johnson v. State*, 833 N.E.2d 516 (Ind. Ct. App. 2005), with approval. In *Johnson*, a defendant in custody "turned away and pushed away with his shoulders" when an officer attempted to search him. *Id.* at 517. When officers attempted to place him into a transport vehicle, the defendant "stiffened up," and the officers had to physically place him inside. *Id.* The *Graham* Court noted that the Court of Appeals in the *Johnson* case correctly held that the defendant's actions constituted forcible resistance. 903 N.E.2d at 966.

Benedict points to two cases from this Court in which the evidence was insufficient and argues that the facts in those cases are similar to the facts in this case. *See A.C. v. State*, 929 N.E.2d 907, 911-12 (Ind. Ct. App. 2010) (insufficient evidence to support true finding of resisting law enforcement where juvenile did not stand up when asked, officer pulled him to his feet and handcuffed him without resistance, juvenile leaned away and pulled left side of his pants down when officer pulled up juvenile's pants, and juvenile later leaned away from officer); *Colvin v. State*, 916 N.E.2d 306, 309 (Ind. Ct. App. 2009) (insufficient evidence to support resisting law enforcement conviction where defendant refused to comply with officers' commands including order to take his hands out of his pockets and officers had to physically place him on ground to

handcuff him), *trans. denied*. These cases, however, are distinguishable from the instant case because there was no evidence of force in those cases.

In contrast, here, the evidence most favorable to the judgment shows that Benedict charged toward Officers Walters and Kessie and pushed them. When they attempted to handcuff her, she pulled away from Officer Walters, tried to spin forcefully away from their grasp, and locked her arms to her side. The officers were able to place her in handcuffs only after a brief struggle. This evidence is sufficient to support the force element of resisting law enforcement. *See Lopez v. State*, 926 N.E.2d 1090, 1093-94 (Ind. Ct. App. 2010) (sufficient evidence where defendant refused to stand to be cuffed and instead crossed his arms in front of his chest, defendant started to pulled away when officers tried to physically pull him up, defendant started to pull away when officers grabbed his arms, and officers took defendant to the ground and attempted to put his arms behind his back but were unable to do so), *trans. denied*; *J.S. v. State*, 843 N.E.2d 1013, 1017 (Ind. Ct. App. 2006) (concluding juvenile acted with requisite force where she "flailed her arms, pulled, jerked, and yanked away" from school police officer), *trans. denied*.

Despite this clear evidence, Benedict argues that it was the officers and not her who acted with force. Appellant's Br. p. 4, 6. She points to *Berberena v. State*, 914 N.E.2d 780 (Ind. Ct. App. 2009), *trans. denied*. In that case, we reversed a resisting law enforcement conviction where the defendant refused to comply with an officer's order to put his hands behind his back, the officer had to forcefully place the defendant against the wall of a building, and the officer struggled to place him in handcuffs. *Id.* at 781.

Benedict states that in *Berberena*, "the officer had to 'forcibly place' Berberena's hands in the cuffs…similar to this situation. Such was found to be insufficient to support the conviction." Appellant's Br. p. 6-7. Benedict misconstrues *Berberena*. In that case, it was not the officer's force that resulted in the reversal of the conviction, but a lack of evidence of the defendant's force in resisting.

Further, to the extent Benedict argues that she did not push the officers, pull away from one of them, try to spin forcefully away from their grasp, or lock her arms to her sides, we may not reweigh the evidence.

We conclude that there is sufficient evidence that Benedict resisted law enforcement and therefore affirm her conviction.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.