MEMORANDUM DECISION

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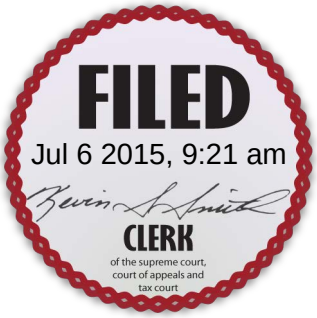

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IN THE
COURT OF APPEALS OF INDIANA

Richard Jones,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff.

July 6, 2015

Court of Appeals Case No. 49A04-1411-CR-511

Appeal from the Boone Circuit Court

The Honorable Linda Brown, Judge

Case No. 49G10-1409-CM-041810

Vaidik, Chief Judge.

Case Summary

[1] In August 2014, an Indianapolis police officer responded to a 911 call that a person was down with a male standing over the person down. Upon arrival,

the officer saw Richard Jones standing over a female lying in the middle of a city street. As the officer used his patrol car to protect the female from traffic, Jones walked to the other side of the street. The officer then asked Jones to "come here," but Jones did not stop. Jones was eventually apprehended in some bushes.

[2] The State charged Jones with Class A misdemeanor resisting law enforcement by fleeing, and the trial court found him guilty. Jones now appeals arguing that the evidence is insufficient to prove that he had a duty to stop because the officer did not have reasonable suspicion that he had committed or was about to commit a crime. Because the officer's order to stop rested on specific, articulable facts that led him to reasonably suspect that criminal activity was afoot, we conclude that the evidence is sufficient to support his conviction. We therefore affirm the trial court.

Facts and Procedural History

[3] The facts most favorable to the judgment show that around 10:30 p.m. on August 28, 2014, Indianapolis Metropolitan Police Department Officer Darrell Miller was dispatched to the entrance of Crown Hill Cemetery near the intersection of 38th Street and Clarendon Road on a report of "a person down" "with a male figure standing over the person down, or standing over the body." Tr. p. 7. Upon arrival Officer Miller saw a female—later identified as Dorie Howe—lying in the middle of Clarendon Road and a male—later identified as Jones—"standing over" her. *Id*. Officer Miller was in a marked car with his

emergency and spot lights on, and he was wearing his police uniform. As Officer Miller blocked Clarendon Road with his patrol car to protect Howe from traffic, Jones walked to the other side of the street. *Id.* at 8. After Jones walked across the street, Officer Miller, who was still in his patrol car, told Jones to "come here." *Id.* Jones, however, continued walking. At this point, the person who had called 911 approached Officer Miller and told him what he had seen. Specifically, the witness explained that the male was "standing over" the female on the ground, "shouting at her," and "daring her to get up." *Id*. at 9. Officer Miller did not obtain the name of this witness. *Id*. at 12.

[4] After speaking with the witness, Officer Miller told Jones to "come here" a second time. *Id.* at 9. Jones made a motion and "acted like he was talking on his cell phone" as he turned and started walking eastbound on 38th Street. *Id*. As Jones walked eastbound on 38th Street, Howe got up and started walking in the opposite direction on 38th Street. At this point, both Officer Miller and Officer Linda Roeschlein, who had also responded to the 911 call, were "confused" and did not "know what was really going on." *Id*. at 10. So, Officer Roeschlein checked on Howe—who was uncooperative and released without incident—while Officer Miller got back into his patrol car and followed Jones onto 38th Street. *Id*. When Officer Miller turned onto 38th Street, he saw Jones sitting on the curb and shined his spotlight on him. Jones got up and began walking toward Byram Avenue. *Id.* As Officer Miller turned the corner onto Byram Avenue to follow Jones, Officer Miller passed two parked cars and "lost visual sight" when Jones "dove" into some bushes by a house. *Id*. at 10,

14. Officer Miller told Jones, for a third time, to "come back here." *Id.* at 11 (Officer Miller testifying that he told Jones three times to come here—twice on Clarendon Road and once on Byram Avenue—but Jones never did). Officer Miller saw the bushes moving and found Jones lying face down in the bushes. *Id.* at 32. Officer Miller "ordered [Jones] out of the bushes at gun point . . . [,] holstered [his] weapon . . . [,] went in the bushes, drug him out[,] and cuffed him." *Id*.

[5] A bench trial was held, and Jones testified in his defense that: (1) he knew Howe and was helping her get up; (2) he never heard Officer Miller call to him; and (3) he did not dive into the bushes but rather urinated "right next to the bushes." *Id.* at 24, 26, 27, 28. The trial court found Jones guilty of Class A misdemeanor resisting law enforcement by fleeing and sentenced him to 365 days in the Marion County Jail with 283 days suspended to probation.

[6] Jones now appeals.

Discussion and Decision

[7] Jones contends that the evidence is insufficient to support his conviction. When an appellant challenges the sufficiency of the evidence, we do not reweigh the evidence nor the credibility of the witnesses. *Gaddie v. State*, 10 N.E.3d 1249, 1252 (Ind. 2014). We only determine whether the probative evidence and reasonable inferences drawn from it could have allowed a

reasonable trier of fact to find each of the elements of the charged offense proven beyond a reasonable doubt. *Id*.

[8] To convict Jones of resisting law enforcement as charged here, the State was required to prove beyond a reasonable doubt that Jones knowingly fled from Officer Miller after he had, by visible or audible means, identified himself and ordered Jones to stop. Ind. Code § 35-44.1-3-1(a)(3); Appellant's App. p. 11. Jones argues that the evidence is insufficient to prove that he had a duty to stop because Officer Miller did not have reasonable suspicion that he had committed or was about to commit a crime.

[9] The Fourth Amendment to the United States Constitution gives people the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches or seizures." U.S. Const. amend. IV. "At minimum, the government's seizure of a citizen must rest on specific, articulable facts that lead an officer to reasonably suspect that criminal activity is afoot." *Gaddie*, 10 N.E.3d at 1253 (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)).

[10] The Indiana Supreme Court recently addressed in *Gaddie* whether a police officer's order to stop must be lawful before a defendant is required to stop. In that case, a police officer responded to a report of a "disturbance" at an Indianapolis house. *Id.* at 1252. When the officer arrived, he saw about eight people standing on the front porch and in the front yard "screaming and yelling" and several other people, including the defendant, walking toward the back of the house. *Id.* The officer told the group to return to the front yard so

he could watch everyone until backup arrived. Everyone but the defendant complied. The officer followed the defendant and told him to stop. The defendant, however, continued walking toward an alley. The officer continued to follow the defendant and repeated his order to stop. The defendant looked back at the officer two or three times but continued walking. The officer radioed for help, and another officer intercepted the defendant on the next street over about forty-five seconds later. The State charged the defendant with resisting law enforcement by fleeing, and he was convicted. On appeal, the defendant argued that the evidence was insufficient to support his conviction because he did not have a duty to stop.

[11] In agreeing with the defendant, our Supreme Court reasoned, "If a citizen's freedom to walk away is deemed a criminal offense merely because it follows an officer's command to halt—even in the absence of probable cause or reasonable suspicion—then the citizen's freedom is restrained contrary to the protections of the Fourth Amendment." *Id.* at 1254. Quoting *Florida v. Royer*, 460 U.S. 491, 497-98 (1983), the Court noted that a "person approached by police 'need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way. He may not be detained even momentarily without reasonable, objective grounds for doing so . . . .'" *Id.* Accordingly, the Court concluded:

> A person's well-established freedom to walk away is thus violated when that person is subjected to a statute that makes it a criminal offense to decline a police order to stop. To hold that a citizen may be criminally prosecuted for fleeing after being ordered to stop by a law[-

>]enforcement officer lacking reasonable suspicion or probable cause to command such an involuntary detention would undermine longstanding search[-]and[-]seizure precedent that establishes the principle that an individual has a right to ignore police and go about his business.

Id. In order to interpret the resisting-law-enforcement statute as constitutional, the Court held that the statutory element "after the officer has . . . ordered the person to stop" "must be understood to require that such order to stop rest on probable cause or reasonable suspicion, that is, specific, articulable facts that would lead the officer to reasonably suspect that criminal activity is afoot."[1] *Id.* at 1255. "Absent proof that an officer's order to stop meets such requirements, the evidence will be insufficient to establish the offense of Resisting Law Enforcement by fleeing." *Id.*

[12] Applying the law to the facts, the *Gaddie* Court noted that the defendant did not change his behavior when the officer appeared and ordered him to stop; he looked back two or three times but continued walking. The Court pointed out that a refusal to cooperate, without more, does not furnish reasonable suspicion, but "'nervous, evasive behavior is a pertinent factor in determining reasonable suspicion.'" *Id.* at 1256 (quoting *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000)). The Court also noted that "the mere existence of a disturbance, standing alone, does not identify specific, articulable facts that lead an officer to

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[1] Our Supreme Court agreed with the State that the language of the resisting-law-enforcement statute, on its face, does not expressly require that the order to stop be lawful. However, the Court held that if the statute were applied literally in the absence of probable cause or reasonable suspicion, it would constitute "an unreasonable detention and impair[] a citizen's right to ignore the police and go about his business." *Gaddie*, 10 N.E.3d at 1254-55 (quotation omitted).

reasonably suspect that criminal activity is afoot, as is required for a valid investigatory stop." *Id.* Accordingly, the Court concluded that the circumstances of the disturbance and the officer's presence did not provide sufficient evidence to prove the element that the order to stop was supported by probable cause or reasonable suspicion.[2] *Id.*

[13] Jones argues that the facts in this case are like the facts in *Gaddie*;[3] therefore, because Officer Miller did not have reasonable suspicion that Jones had committed a crime or was about to commit a crime, he was free to leave. Here, the facts show that Officer Miller—responding to a 911 call of "a person down" "with a male figure standing over the person down, or standing over the body"—saw Howe lying in the middle of Clarendon Road and Jones "standing over" her at 10:30 at night. Tr. p. 7. As Officer Miller blocked Clarendon

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[2] The Court also said that although not argued by the State, "a citizen's conduct, after being commanded to stop, cannot retroactively justify the officer's command. The order to stop must itself be supported by probable cause or reasonable suspicion preceding or concurring with the stop order to support a conviction for fleeing law enforcement." *Gaddie*, 10 N.E.3d at 1256 n.4. Therefore, we only look to Jones's conduct when Officer Miller first ordered him to stop to determine whether reasonable suspicion existed.

[3] Jones also argues that this case is like *Griffin v. State*, 997 N.E.2d 375 (Ind. Ct. App. 2013), *trans. denied*. In *Griffin*, the police officer, in his patrol car, passed the defendant, who was walking down the street. The officer thought that the defendant was "unstable" and turned his patrol car around to investigate. When the officer asked the defendant what was going on, the defendant accused the officer of trying to run him over. Although the two men were standing fifteen feet apart, the defendant threw two "shadow punches" at the officer and ran away. The officer pursued the defendant and ordered him to stop. This Court found that the record did not "reveal any facts warranting a detention [of the defendant]" and that "none of [the defendant's] actions suggested any criminal offense." *Id.* at 380. As explained above, however, we find that Jones's actions in standing over a female lying in the middle of the street at 10:30 at night and walking away from the female when police arrived, provide reasonable suspicion that criminal activity was afoot. This case is therefore distinguishable from *Griffin*.

Road with his patrol car to protect Howe from traffic, Jones walked to the other side of the street. At this point, Officer Miller told Jones to "come here." *Id.*

[14] This situation is far more troubling than the "disturbance" in *Gaddie*, where eight people were screaming and yelling on the front porch and in the front yard and several other people, including the defendant, were walking toward the back of the house. The fact that Howe was lying in the middle of a city street with Jones standing over her suggests that something suspicious had occurred to put or keep her there; in other words, criminal activity was afoot. Also, in *Gaddie*, the defendant was already walking toward the back of the house when the officer arrived; therefore, our Supreme Court found that the defendant did not change his behavior when the officer appeared and ordered him to stop. Here, however, Jones started walking to the other side of the street when Officer Miller blocked traffic. We therefore find that Officer Miller's first order to stop rested on specific, articulable facts that led him to reasonably suspect that criminal activity was afoot. Because the circumstances that existed when Officer Miller first ordered Jones to "come here" provide sufficient evidence to prove the element that the order to stop was supported by reasonable suspicion, we affirm Jones's conviction for resisting law enforcement by fleeing a police order to stop.

[15] Affirmed.

Kirsch, J., and Bradford, J., concur.