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.

FILED
Jul 15 2009, 8:48 am
CLERK
of the supreme court, court of appeals and tax court

ATTORNEY FOR APPELLANT:

TIMOTHY J. BURNS
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

NICOLE DONGIEUX WIGGINS
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IESHA CALVERT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0812-CR-728
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Rubick, Commissioner
Cause No. 49F10-0807-CM-175694

July 15, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Iesha Calvert appeals her convictions for Class A misdemeanor resisting law enforcement and Class B misdemeanor disorderly conduct. We affirm.

Issues

Calvert raises two issues, which we restate as:

I. whether there was sufficient evidence to support the resisting law enforcement conviction; and

II. whether there was sufficient evidence to support the disorderly conduct conviction.

Facts

The evidence most favorable to the convictions is that Indianapolis Metropolitan Police Department ("IMPD") officer Michael Phillips noticed a large disturbance during his patrol of Eastern Avenue around 2:40 in the morning on July 25, 2008. Officer Phillips pointed his spotlight at the crowd of fifteen to twenty individuals who appeared to be arguing with a group of four or five individuals in a nearby car. Officer Phillips asked the crowd at least five times to be quiet and calm down, yet they continued to yell and scream. Calvert was yelling and screaming with them.

Officer Phillips asked the group to step away from the car. As the group continued to move toward the car, Officer Phillips put his right arm up to attempt to keep them back. Calvert grabbed Officer Phillips's arm and tugged, but he pulled away. She said something to the effect of, "they are just teenagers." Tr. p. 8. The group continued to advance toward the car. Officer Phillips got closer to the car and asked them again to step back.

As other IMPD officers arrived on the scene, Officer Phillips attempted to arrest Calvert for battery and disorderly conduct. He told her to stop and put her hands behind her back, but she only backed away from him. He was able to pull one of her arms behind her back, and told her to put the other one behind her back. Calvert protested and kept saying "what did I do" and "they are just teenagers." Id. at 10. She stiffened her free arm, and Officer Phillips had to pull it behind her back as it became almost "rigid" as she "attempted to keep it from bending or moving behind her back." Id.

The State charged Calvert with Class A misdemeanor battery, Class A misdemeanor resisting law enforcement, and Class B misdemeanor disorderly conduct. She was convicted of resisting law enforcement and disorderly conduct following a bench trial. This appeal followed.

Analysis

Calvert argues that insufficient evidence existed to sustain her convictions. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, not ours, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. Id. When confronted with conflicting evidence, we must consider it in a light most favorable to the conviction. Id. We will affirm the conviction unless no reasonable fact-finder could have found the elements of the crime proven beyond a reasonable doubt. Id.

I. Resisting Law Enforcement

A person commits Class A misdemeanor resisting law enforcement when he or she "knowingly or intentionally forcibly resists, obstructs, or interferes with a law enforcement officer while the officer is lawfully engaged in the execution of his duties." Ind. Code § 35-44-3-3(a)(1). Force is an element of the offense, and our supreme court has explained that one forcibly resists when "strong, powerful, violent means are used to a evade a law enforcement official's right to exercise his or her duties." Spangler v. State, 607 N.E.2d 720, 723 (Ind. 1993). The supreme court later explained, "the force involved need not rise to the level of mayhem." Graham v. State, 903 N.E.2d 963, 965 (Ind. 2009).

When assessing what actions constitute forcible resistance, the Graham court explained that "even 'stiffening' of one's arms when an officer grabs hold to position them for cuffing would suffice." 903 N.E.2d at 966; see also Johnson v. State, 833 N.E.2d 516, 518-19 (Ind. Ct. App. 2005) (affirming conviction based on defendant's acts of turning and pushing away from officers and stiffening when they attempted to put him in vehicle). Officer Phillips indicated that Calvert refused to allow him to pull her arms behind her back for cuffing. She "tensed up" and her arm became "rigid" as she "attempted to keep it from bending or moving." Tr. p. 10. These facts are sufficient to sustain her conviction for resisting law enforcement.

II. Disorderly Conduct

Calvert argues that there is insufficient evidence that she engaged in disorderly conduct because there is no evidence she, individually, continued to make unreasonable

noise after being asked to stop. As charged here, the State was required to prove that Calvert recklessly, knowingly, or intentionally engaged in fighting or in tumultuous conduct and/or made unreasonable noise and continued to do so after being asked to stop. See I.C. § 35-34-1-3(a)(1) & (2).

Officer Phillips testified Calvert was part of a group that continued yelling and screaming after repeatedly being asked to stop. The group's noise could be heard from a block away after two o'clock in the morning on a residential street. A neighbor woke up and came outside. Calvert argues that the record is devoid of any evidence that she, individually, caused the disturbance and is limited to describing the actions of the group. Our supreme court has held, however, that an individual's participation as a member of a group causing a loud and boisterous disturbance is sufficient to sustain a disorderly conduct conviction. Hicks v. State, 260 Ind. 204, 209, 294 N.E.2d 613, 616 (1973). Officer Phillips testified that Calvert continued to "yell and scream" after being asked to stop. Tr. p. 7. Calvert's behavior and participation in the group's disruption was sufficient to sustain her conviction.

Calvert next claims her statements were protected political speech, under Article 1, Section 9 of the Indiana Constitution. Calvert was apparently trying to dissuade Officer Phillips from using Mace on the group, saying they were "just teenagers" and they were her "baby" cousins. Id. at 12, 20. According to her own testimony, Calvert was also trying to convince Officer Phillips that the matter was a family dispute and implied that he should leave the group alone. Calvert maintains that these statements constituted a lawful objection to police conduct. According to Officer Phillips, however,

prior to these statements she was yelling and screaming with the group causing the disturbance. We agree with the State that Calvert's later "family dispute" type statements after she was screaming and yelling as part of the group are irrelevant to determining the sufficiency of the evidence to support her disorderly conduct conviction.

Even so, when reviewing whether the State has violated Article 1, Section 9, we must determine whether the state has restricted a claimant's expressive activity and if so, whether the restricted activity constituted an abuse of the right to speak. Anderson v. State, 881 N.E.2d 86, 90 (Ind. Ct. App. 2008). Even if Calvert's statements regarding leaving the teenagers alone may be considered political, she also made statements like "this is a family dispute" and told Officer Phillips there was "no big problem here." Tr. p. 19. Because the disturbance involved nearly twenty individuals yelling and making noise that could be heard a block away on a residential street after two o'clock in the morning drawing the attention of a patrolling officer, it had escalated beyond a family dispute. At that point, Calvert was interfering with the police officer's exercise of duty as he attempted to quiet the crowd and quell the disturbance. See J.D. v. State, 859 N.E.2d 341, 344 (Ind. 2007) (finding that alleged political speech consisting of defendant's persistent loud yelling over and obscuring a deputy's attempts to speak and function as a law enforcement officer amounted to an abuse of the right of free speech and subjected defendant to accountability under Article 1, Section 9). These facts are sufficient to sustain Calvert's conviction for disorderly conduct.

Conclusion

Sufficient evidence exists to support Calvert's resisting law enforcement and disorderly conduct convictions. We affirm.

Affirmed.

BAKER, C.J., and MAY, J., concur.