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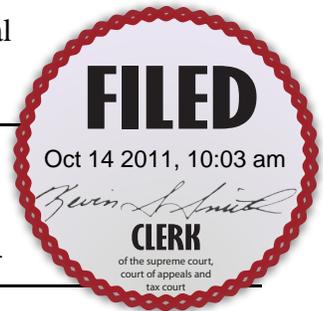
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**IN THE
COURT OF APPEALS OF INDIANA**



AMBER EASTON,)

Appellant-Defendant,)

vs.)

No. 49A02-1103-CR-214)

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda E. Brown, Judge
The Honorable Steven J. Rubick, Magistrate
Cause No. 49F10-0910-CM-85711

October 14, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Amber Easton challenges her conviction of Class A misdemeanor resisting law enforcement.¹ Easton argues the evidence was insufficient to support her conviction. We affirm.

FACTS AND PROCEDURAL HISTORY

On October 4, 2009, Easton planned to attend a dance at the University of Indianapolis. When she arrived, officers from the University of Indianapolis Police Department were shutting down the dance and Officer Hailey Padgett would not let Easton enter. Easton asked Officer Padgett several times why she was not being allowed inside, and Officer Padgett explained the venue was well over capacity and no one else could enter. Officer Padgett then advised Easton to leave the area, to which Easton loudly responded, “it’s a free country” and “you’re not my mamma.” (Tr. at 11.)

Easton refused to leave and began “yelling, cussing, and drawing attention to herself.” (*Id.* at 6.) When the crowd started to become agitated, Officer Padgett decided to arrest Easton to keep control of the situation. Officer Padgett approached Easton from behind and grabbed Easton’s left wrist in order to place her under arrest. In one fluid motion, Easton turned around and pulled her arms away, causing Officer Padgett to fall to the ground. Then, as Easton stood over Officer Padgett, she put her hands up in the air and asked the Officer “now what . . . what are you going to do now?” (*Id.* at 18.)

¹ Ind. Code § 35-44-3-3.

Officer Jeffery Dishman saw the interaction between Officer Padgett and Easton and heard Easton asking Officer Padgett what she “was going to do now.” *Id.* In response, he pinned Easton against a retaining wall. Officer Dishman repeatedly ordered Easton to produce her hands for arrest, but she did not. Then, he testified, “I was trying to pull her hands and she had them all tucked in.” (*Id.* at 19.) Officer Padgett testified Easton would not allow the officers to grab her arm to place her in handcuffs, but they were able to handcuff her “after several attempts.” (*Id.* at 9.)

The State charged Easton with Class A misdemeanor battery on an officer,² Class A misdemeanor resisting law enforcement, and Class B misdemeanor disorderly conduct.³ After a bench trial, the court found Easton guilty of resisting law enforcement.

DISCUSSION AND DECISION

In reviewing sufficiency of evidence, we may not reweigh evidence or judge credibility of witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the trial court’s decision, *id.*, and affirm unless “no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000).

A person who knowingly or intentionally “forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully

² Ind. Code § 35-42-2-1.

³ Ind. Code § 35-45-1-3.

engaged in the execution of the officer's duties" commits resisting law enforcement. Ind. Code § 35-44-3-3(a)(1). A person "who directs strength, power or violence towards police officers or who makes a threatening gesture or movement in their direction" acts "forcibly." *Price v. State*, 622 N.E.2d 954, 963 n.14 (Ind. 1993). While refusing to present one's arms for cuffing, without more, is not forcible resistance, *Graham v. State*, 903 N.E.2d 963, 966 (Ind. 2009), the "stiffening" of one's arms when an officer grabs hold to position them for cuffing would suffice. *Id.* Furthermore, a defendant forcibly resists when he will not allow an officer to pull the defendant's arms out from underneath him. *Lopez v. State*, 926 N.E.2d 1090, 1094 (Ind. Ct. App. 2010).

Easton argues the evidence is not sufficient to sustain her conviction of resisting law enforcement because, in acquitting her of battery on Officer Padgett, the court said: "Clearly there was contact between Ms. Easton and Officer Padgett, but I do not find that the contact was –it rose to the level of a knowing insolent touching. I don't believe Ms. Easton had the *mens rea* necessary to commit battery on an officer[.]" (Tr. at 46.)

Finding that Easton did not commit battery on Officer Padgett does not preclude a finding she resisted law enforcement,⁴ because the charging information also alleged Easton

⁴ Easton asserts the court's statement regarding her lack of *mens rea* to commit battery on an officer constitutes amounts to a finding she did not know the person who grabbed her was a police officer. It does not. The court said: "I do not find that the contact . . . rose to the level of a knowing insolent touching." (Tr. at 46.) In contrast, as to resisting, the court said the State met its burden because of "the demeanor or the conduct rather of Ms. Easton spinning away from Officer Padgett and attempting to pull her arms back." (*Id.*) Thus, the court could have found Easton spun and pulled away from Officer Padgett, but there was no touching that would permit a battery conviction. Accordingly, we decline to hold the court's statement compels a not guilty finding as to resisting Officer Padgett.

resisted Officer Dishman. In finding Easton guilty of resisting law enforcement, the court said:

the State has met its burden; the demeanor or the conduct rather of Ms. Easton . . . attempting to pull her arms back. The description given by Officer Dishman I believe meets or (inaudible) describes a forcible resist; and, I am going to find the defendant guilty of count two (2) Resisting Law Enforcement by force.

(*Id.*) Officer Dishman testified Easton knew she was being arrested, he tried to pull her arms out to place her in handcuffs, but she had them “tucked in.” (*Id.* at 19.) He testified the officers attempted to place Easton in handcuffs “several times” before they were successful. (*Id.* at 9.) From this evidence, the court could reasonably infer Easton forcibly resisted law enforcement when she would not allow Officer Dishman to pull her arms from a “tucked in” position. *See Lopez*, 926 N.E.2d at 1094 (that defendant would not allow officer to move defendant’s hands into cuffing position led to permissible inference that defendant forcibly resisted arrest).

Easton relies on *Colvin v. State*, 916 N.E.2d 306 (Ind. Ct. App. 2009), *trans. denied*, where we found Colvin did not forcibly resist law enforcement. Colvin did not comply with a police order to remove his hands from his pockets, but there was no evidence Colvin stiffened his arms or otherwise forcibly resisted the officers who were placing his hands behind his back. Officer Dishman’s testimony that he tried to “pull [Easton’s] hands” out, (Tr. at 19), permits an inference that Easton, unlike Colvin, did more than simply refuse to produce her hands when ordered to do so. *See Lopez*, 926 N.E.2d at 1094 (that defendant

would not allow officer to move defendant's hands into cuffing position led to permissible inference that defendant had forcibly resisted arrest).

Easton's claim that she could not produce her hands because she was pinned against a wall is an invitation for us to reweigh the evidence and judge the credibility of the witnesses, which we may not do. *See McHenry*, 820 N.E.2d at 126. Accordingly, we affirm Easton's conviction of Class A misdemeanor resisting law enforcement.

Affirmed.

NAJAM, J., and RILEY, J., concur.