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IN THE
COURT OF APPEALS OF INDIANA

LATRINA STRADER,	)	
	)	
Appellant/Defendant,	)	
	)	
vs.	)	No. 49A05-1004-CR-235
	)	
STATE OF INDIANA,	)	
	)	
Appellee/Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Richard Sallee, Senior Judge
Cause No. 49F19-1001-CM-1681

November 24, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Latrina Strader appeals from her conviction of Class A misdemeanor Resisting Law Enforcement.[1] Strader contends that the State failed to produce sufficient evidence to prove that she knowingly or intentionally resisted law enforcement or that she forcibly did so. We affirm.

FACTS AND PROCEDURAL HISTORY

Early in the morning on January 10, 2010, Indianapolis Metropolitan Police Officer Jerome Barker was on patrol outside the Club Level wearing full uniform and driving his marked car. (Tr. 5-6). Officer Barker saw Strader among a group of women who were escorted out of Club Level by security personnel. (Tr. 8). Strader appeared to be upset and grabbed and began shaking a post on a tent outside the entrance to Club Level, which tent is apparently used to protect employees from the elements. (Tr. 8). When Officer Barker approached Strader and asked her to calm down, she ignored him. (Tr. 8). Strader also ignored Officer Barker when he asked her to put her hands behind her back. (Tr. 8).

When Officer Barker "grabbed" Strader's arms, she pulled away said, "get your mother f****** hands off of me." Tr. p. 8. Officer Barker pinned Strader against the wall and asked her again to put her hands behind her back, but she did not. (Tr. 11). Strader attempted to "get out of [Officer Barker's] grasp, at which point [he] just took her to the ground and handcuffed her." Tr. p. 11. Later that day, the State charged Strader with Class A misdemeanor resisting law enforcement, and, following a bench trial on

[1] Ind. Code § 35-44-3-3 (2009).

March 29, 2010, the trial court found her guilty as charged and sentenced her to ten days of incarceration with eight suspended. (Appellant's App. 8, 14; Tr. 27).

DISCUSSION AND DECISION

Whether the State Produced Sufficient Evidence to Sustain Strader's Conviction

When reviewing the sufficiency of the evidence, we neither weigh the evidence nor resolve questions of credibility. *Jordan v. State*, 656 N.E.2d 816, 817 (Ind. 1995). We look only to the evidence of probative value and the reasonable inferences to be drawn therefrom which support the verdict. *Id.* If from that viewpoint there is evidence of probative value from which a reasonable trier of fact could conclude that the defendant was guilty beyond a reasonable doubt, we will affirm the conviction. *Spangler v. State*, 607 N.E.2d 720, 724 (Ind. 1993).

The offense of resisting law enforcement is governed by Indiana Code section 35-44-3-3, which provides, in relevant part, that "(a) A person who knowingly or intentionally: (1) forcibly resists, obstructs, or interferes with a law enforcement officer … while the officer is lawfully engaged in the execution of the officer's duties … commits resisting law enforcement, a Class A misdemeanor." The word "'forcibly' modifies 'resists, obstructs, or interferes' and that force is an element of the offense." *Graham v. State*, 903 N.E.2d 963, 965 (Ind. 2009); *see also Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993). Thus, to convict Strader of Class A misdemeanor resisting law enforcement, the State needed to prove that she: (1) knowingly or intentionally; (2) forcibly resisted, obstructed, or interfered with a law enforcement officer; (3) while the officer was lawfully engaged in the execution of his duties. One "forcibly resists," for

purposes of forcibly resisting law enforcement, when one uses "strong, powerful, violent means" to evade a law enforcement official's rightful exercise of his or her duties. *Graham*, 903 N.E.2d at 965; *Spangler*, 607 N.E.2d at 726.

A. Whether Strader Knowingly or Intentionally Resisted

Strader argues that the State failed to prove that she knew that Officer Barker was, in fact, a police officer when she resisted his efforts to detain her. Strader points to the lack of evidence that Officer Barker verbally identified himself as a police officer and her testimony that she had been blinded when somebody maced her inside Club Level. We have held that, in resisting law enforcement cases, "the evidence must show that the defendant knew or had reason to know that the person resisted is a police officer." *Sayles v. State*, 513 N.E.2d 183, 187 (Ind. Ct. App. 1987). Although Officer Barker appears not to have identified himself verbally as a police officer, he was in uniform and driving his marked patrol car. Moreover, the trial court was under no obligation to credit Strader's testimony that she was temporarily blinded by mace. Assuming that Strader could, in fact, see, it is reasonable to infer that at some point during her encounter with Officer Barker she noticed that he was in full uniform. Strader's argument on this point is an invitation to reweigh the evidence, which we will not do.

B. Whether Strader Forcibly Resisted

Strader also contends that her resistance did not rise to the level of forcible resistance. While the Indiana Supreme Court has held that "[i]t is error as a matter of law to conclude that 'forcibly resists' includes all actions that are not passive[,]" *Spangler v. State*, 607 N.E.2d 720, 724 (Ind. 1993), it has also made it clear that "[t]he force involved

need not rise to the level of mayhem." *Graham v. State*, 903 N.E.2d 963, 965 (Ind. 2009). The Indiana Supreme Court has concluded that "even 'stiffening' of one's arms when an officer grabs hold to position them for cuffing would suffice[.]" *Id*. While the defendant's conviction for resisting law enforcement was reversed in *Graham*, this case is easily distinguished.

In *Graham*, the record contained no evidence that Graham did anything more than refuse to present his arms for cuffing when asked, *see id.*, but the record here indicates that Strader's actions went beyond Graham's passive resistance. When Officer Barker initially took hold of Strader's arms, she "pulled away" from him and used obscenities. After Officer Barker pinned Strader against a wall, she "tried to get out [his] grasp[,]" "tried to wiggle out of [his] hold[,]" "began to squirm[,]" and "tr[ied] to get out of [his] grasp by pulling away, things like that." Tr. pp. 11-12. Pulling away and otherwise attempting to escape Officer Barker's grasp by force constitute more than a mere passive refusal to present one's arms to be cuffed and support a conclusion that Strader forcibly resisted Officer Barker. *See, e.g.*, *Johnson v. State*, 833 N.E.2d 516, 518-19 (Ind. Ct. App. 2005) (concluding that defendant forcibly resisted when he turned away and pushed with his shoulders when officers attempted to search him and when he "stiffened up," forcing officers to exert force to place him in the transport vehicle). We conclude that the State produced sufficient evidence to sustain Strader's resisting law enforcement conviction.

We affirm the judgment of the trial court.

KIRSCH, J., and CRONE, J., concur.