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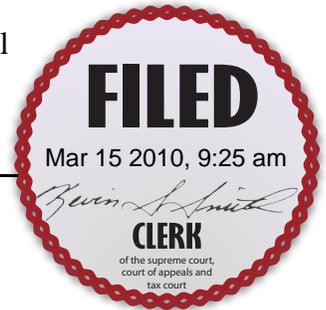
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**IN THE
COURT OF APPEALS OF INDIANA**

LASHAWNA ELLIS,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A02-0908-CR-719

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 7
The Honorable William J. Nelson, Judge
Cause No. 49F07-0811-CM-255982

March 15, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Lashawna Ellis (Ellis), appeals her conviction for resisting law enforcement, as a Class A misdemeanor, Ind. Code § 35-44-3-3.

We affirm.

ISSUE

Ellis raises one issue for our review, which we restate as: Whether the State presented sufficient evidence to prove beyond a reasonable doubt that she forcibly resisted law enforcement.

FACTS AND PROCEDURAL HISTORY

Shortly before midnight on November 8, 2008, the Indianapolis Metropolitan Police Department received an incomplete 911 call where a female was heard screaming in the background. Officers Marlin Sechrist (Officer Sechrist) was first to arrive at the residence. He stood outside the front door until backup Officers Juanita Barnes (Officer Barnes),¹ and Rodney Bradway (Officer Bradway) arrived. While standing there, he heard a male and a female arguing inside the residence. Once Officers Barnes and Bradway arrived, Officer Sechrist knocked on the door. Ocassio Dash (Dash), who was dressed in boxer shorts and a t-shirt, opened the door and stated that he wanted the opportunity to get dressed before he let the Officers inside the house. As he attempted to close the door, Officer Sechrist told Dash that he could not shut the door because the Officers needed to investigate the incomplete 911

¹ In the record, Officer Barnes is referred to as Officer Juanita Sickles by Officer Sechrist, however, everywhere else in the record she is referred to as Officer Barnes.

call. Dash then allowed the Officers into the house, however, Dash “stopped and turned on [the officers] and [] squared up on [Officer Sechrist]” at which point Officer Sechrist took Dash to the ground and handcuffed him. (Transcript p. 9). Ellis then walked into the living area where they were all standing and told the Officers that they had gotten into an argument. Dash told Officer Sechrist that Ellis had “hit him upside the head” during their argument. (Tr. p. 11). Officer Sechrist then went out to his police car and ran their identifications and learned that Dash had a non-violent no-contact order against Ellis. Based on this information, Officer Sechrist directed Officer Barnes to place Ellis under arrest.

While removing the handcuffs from her duty belt, Officer Barnes told Ellis to stand up and place her hands behind her back. Ellis began arguing with Officer Barnes, but she eventually stood. Officer Barnes tried to put the handcuffs on Ellis, however, she “forcibly resisted by pulling away.” (Tr. p. 18). Officer Bradway came to assist Officer Barnes. Officer Barnes testified that she had to “gain control [of Ellis] by re-grabbing her and putting a cuff on one (1) [wrist] and as she resisted with her other arm I was able to gain control and put a cuff on it.” (Tr. p. 18). While Officer Barnes was putting the handcuffs on Ellis’s wrists, Ellis was “pulling [one arm] back around to the front and refusing to keep it behind her back,” despite being ordered to place her arms behind her back. (Tr. p. 18).

After Officer Barnes was able to placed both handcuffs around Ellis’s wrists, she noticed that one hand was out of the handcuff, which she stated could be used as a weapon against the Officers, and as she tried to put Ellis’s arms behind her back,

[Ellis] was flailing her arms around and not complying at all with the commands of, ‘Put your hands behind your back’ and trying to get the cuffs

back on. At that point, Officer Sechrist had to assist me. He took one (1) arm. I took the other and we did finally get her cuffed.

(Tr. p. 19). All three Officers had to help re-handcuff Ellis.

On November 8, 2008, the State filed an Information, charging Ellis with resisting law enforcement, as a Class A misdemeanor, I.C. § 35-44-3-3. On January 15, 2009, the State amended its charging Information to include Officer Barnes. On April 27, 2009, after a bench trial, the trial court found Ellis guilty as charged and sentenced her to 365 days with 361 days suspended to be served in the Department of Correction.

Ellis now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Ellis argues that the State presented insufficient evidence to convict her of resisting law enforcement. Specifically, she argues that she “did not intentionally use any strong, powerful or violent force toward law enforcement.” (Appellant’s Br. p. 5).

Our standard of review for a sufficiency of the evidence claim is well settled. In reviewing a sufficiency claim, this court does not reweigh the evidence or judge the credibility of the witnesses. We will consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. A conviction may be based upon circumstantial evidence alone. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense.

Perez v. State, 872 N.E.2d 208, 212-13 (Ind. Ct. App. 2007), *trans. denied* (citations omitted).

Indiana Code section 35-44-3-3(a)(1) provides as follows: “A person who knowingly or intentionally (1) forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of the officer’s duties. . . commits resisting law enforcement, a Class A misdemeanor[.]” Thus, to convict Ellis of resisting law enforcement as a Class A misdemeanor, the State was required to prove beyond a reasonable doubt that Ellis knowingly or intentionally acted forcibly in order to resist, obstruct, or interfere with the Officers while they were lawfully engaged in their official duties as police officers.

Ellis relies on *Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993), arguing that her physical resistance did not rise to the level of “powerful, strong or violent” resistance required for a conviction under the statute. (Appellant’s Br. p. 8). In *Spangler*, our supreme court held that “the word ‘forcibly’ modifies ‘resists, obstructs, or interferes’ and that force is an element of the offense.” *Id.* at 723. The court went on to observe that “one ‘forcibly resists’ when strong, powerful, violent means are used to evade a law enforcement official’s rightful exercise of his or her duties.” *Id.*

Recently, our supreme court held that refusing to present one’s arms for cuffing without more resistance, does not constitute the use of force. *Graham v. State*, 903 N.E.2d 963, 965 (Ind. 2009). The court reasoned that refusing to present one’s hands for cuffing was not even the modest level of resistance; however, “stiffening of one’s arms when an officer grabs hold to position them for cuffing” would still be sufficient evidence of forcible resistance of a law enforcement officer. *Id.* at 966. Additionally, we have held that pulling,

jerking, or yanking one's arms away from a law enforcement officer constitutes forcible resistance. *J.S. v. State*, 843 N.E.2d 1013, 1017 (Ind. Ct. App. 2006).

Officer Barnes testified when she tried to handcuff Ellis, she was pulling one arm to the front of her body and refusing to keep it behind her back. Officer Barnes then attempted to take control of one of Ellis's arms, when Ellis "forcibly pulled away from me [and trying to get] her arm away from me so I had to gain control by re-grabbing her and putting a cuff on one (1) [wrist] and as she resisted with her other arm I was able to gain control and put a cuff on it." (Tr. p. 18). At some point, Officer Barnes realized that one of the handcuffs had come undone, and so she tried to regain control of Ellis's arm again and this time, Ellis "flail[ed] her arms around," causing a potentially dangerous situation for the Officers. (Tr. p. 19). It required the efforts of three police officers to finally handcuff Ellis. Given the evidence that Ellis flailed her arms, jerked, and pulled away from the officers, we conclude that it was sufficient to show that Ellis forcibly resisted law enforcement under I.C. § 35-44-3-3.

CONCLUSION

Based on the foregoing, we conclude that the State presented sufficient evidence to prove beyond a reasonable doubt that Ellis forcibly resisted law enforcement.

Affirmed.

VAIDIK, J., and CRONE, J., concur.