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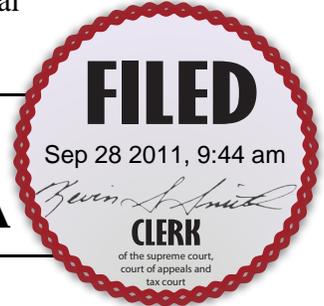
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**IN THE
COURT OF APPEALS OF INDIANA**



TELISA ARNOLD,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 49A02-1101-CR-20

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Mark A. King, Judge Pro Tempore
Cause No. 49F08-1007-CM-55936

September 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Telisa Arnold challenges her conviction of Class A misdemeanor resisting law enforcement.¹ Arnold argues the evidence is insufficient to support her conviction. We affirm.

FACTS AND PROCEDURAL HISTORY

On July 17, 2010, Officers Grace Lopez and Mark Hamner were dispatched to a parking lot to check on the welfare of Arnold. Her car had broken down on an extremely hot day, and there were three children with her. When Officer Lopez approached, Arnold claimed she needed gas and a ride home. Officer Lopez offered Arnold a ride home. Arnold neither accepted nor rejected the ride home; instead, she commented about “there being some kind of issue at home.” (Tr. at 5.) When Arnold refused to explain what the “issue” was, Officer Lopez decided “it was best for officer safety purposes not to put her in my car.” (*Id.*) Officer Hamner described Arnold as “extremely agitated . . . out of control, yelling and screaming.” (*Id.* at 20.)

Arnold began walking home with the three children, one of which was an infant that Arnold had to carry. Officer Lopez called for a tow truck to remove Arnold’s car from the private parking lot and then checked the police database for any information related to the vehicle. A “hit popped up” on Officer Lopez’s computer indicating Arnold was suspected of kidnapping her infant niece. One of the children with Arnold appeared to be about the same age as that niece. (*Id.* at 6.) The tow truck had arrived for Arnold’s car, so the officers left the parking lot in their cars to see if they could locate Arnold and the children.

¹ Ind. Code § 35-44-3-3.

The officers found them a few blocks away. Officer Lopez exited her vehicle and approached Arnold from the front. She told Arnold to stop and to put the infant down. Instead, Arnold continued yelling and screaming and “started to aggressively approach Officer Lopez.” (*Id.* at 21.) Lopez struck Arnold’s chest with the heel of her palm to push Arnold away and “to disengage her.” (*Id.*) Arnold raised her free hand above her head, formed a fist, and aggressively approached Officer Lopez a second time. In response, Officer Lopez kicked Arnold in the abdomen. Arnold handed the infant to an older child and aggressively approached Officer Lopez a third time. Officer Lopez warned Arnold that she would be shocked, but Arnold continued to approach, so Officer Lopez engaged her Taser. The shock momentarily disabled Arnold, who fell to the ground. Arnold then stood up and approached Officer Hamner. After receiving another warning to stop or be shocked, Arnold continued to approach Officer Hamner and he engaged his Taser. While Arnold was subdued from the second shock, Officer Lopez handcuffed her and took her into custody.

The State charged Arnold with Class A misdemeanor resisting law enforcement.

After a bench trial, the court found Arnold guilty:

All right, reviewing the case the Court is mindful of (inaudible) case law that it knows but also what the defense has stated but I’m afraid I disagree with your conclusions and I find that it is unlawful to resist due to an unlawful arrest but I also find in this particular case your three prong test fails in that that was, it’s not whether she committed the crime in front of the officers but whether or not they were investigating a crime of, the level of that crime was. In this case it was a possibility of kidnapping. The use of force necessary to protect others as well as the officers in this type of situation to me signals that they can use proportional use of force. Is it the way I would have wanted it handled, probably not but is it an unconstitutionally use of force, I don’t believe it is. Therefore I find the defendant guilty of the crime of resisting law enforcement as a Class A misdemeanor.

(*Id.* at 40-41.)

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 judgment, *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 engaged in the execution of the officer’s duties” commits resisting law enforcement. Ind. Code § 35-44-3-3(a)(1). The term “forcibly” has been interpreted to mean “an individual who directs strength, power or violence towards police officers or who makes a threatening gesture or movement in their direction, may properly be charged with” resisting law enforcement. *Price v. State*, 622 N.E.2d 954, 963 n.14 (Ind. 1993).

Arnold argues the State did not prove “she used any force that was strong, powerful or violent or that she made any threatening gesture or movement against or toward the officer. Nor did she obstruct or interfere with the officer in the execution of her duties.”² (Br. of

² Arnold also asserts her “failure to stop . . . may have been inappropriate but her actions that day did not rise to the level of intentionally forcibly resisting law enforcement.” (Br. of Appellant at 12.) Failing to stop when ordered to do so by a police officer is the quintessential example of resisting law enforcement by fleeing. *See* Ind. Code § 35-44-3-3(a)(3) (“A person who knowingly or intentionally: . . . (3) flees from a law enforcement officer after the officer has, by visible or audible means, including operation of the law enforcement officer’s siren or emergency lights, identified himself or herself and ordered the person to stop; commits resisting law enforcement[.]”); *Yowler v. State*, 894 N.E.2d 1000, 1003 (Ind. Ct. App. 2008) (refusing to stop when ordered

Appellant at 9.) We cannot agree. When Officer Lopez ordered Arnold to stop and put the infant down, Arnold “aggressively approach[ed]” Officer Lopez until she was so close that Officer Lopez could push Arnold away with a heel strike to Arnold’s chest. (Tr. at 21.) Aggressively approaching an officer within striking distance is a “threatening gesture or movement in [the officer’s] direction.”³ *See Guthrie v. State*, 720 N.E.2d 7, 9 (Ind. Ct. App. 1999) (conviction of resisting law enforcement upheld when State proved Guthrie “did more than passively resist”), *trans. denied*.

Arnold’s claims that she did not make a threatening move toward an officer or interfere with an officer’s investigation are invitations for us to reweigh the evidence and judge the credibility of the witnesses, which we may not do.⁴ *See McHenry*, 820 N.E.2d at 126. We accordingly affirm Arnold’s conviction of Class A misdemeanor resisting law enforcement.

Affirmed.

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

supports conviction of resisting law enforcement). Nevertheless, the State did not charge Arnold with fleeing law enforcement, (*see* Appellant’s App. at 15), and thus we will not affirm on this basis.

³ If her first aggressive approach was not sufficient to support her conviction, there was evidence Arnold aggressively approached Officer Lopez twice more and Officer Hamner once.

⁴ Arnold also argues her “conviction should be reversed because the evidence shows that the force used by the officers was objectively unreasonable and unconstitutionally excessive in violation of the Fourth Amendment of the United States Constitution.” (Br. of Appellant at 12.) We need not address that argument as it is premised on facts favorable to Arnold, rather than the facts most favorable to the judgment. Accordingly, Arnold has not explained why the officers’ behavior was unreasonable under the circumstances the court found to exist. *See* Ind. App. R. 46(A)(8) (requiring argument be supported by cogent reasoning).