MEMORANDUM DECISION

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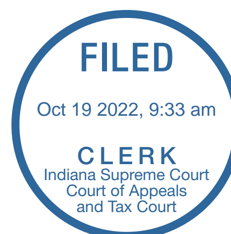

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IN THE COURT OF APPEALS OF INDIANA

Chad M. Grimball,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 19, 2022

Court of Appeals Case No. 22A-CR-810

Appeal from the Boone Circuit Court

The Honorable Lori N. Schein, Judge

Trial Court Cause No. 06C01-2011-F5-2043

Brown, Judge.

[1] Chad M. Grimball appeals his convictions for intimidation and two counts of resisting law enforcement. We affirm.

Facts and Procedural History

[2] On November 29, 2020, Grimball and Christy Grimball, who was his wife at the time, lived in Lebanon, Indiana, and visited another couple who had recently had a baby. During the visit, Christy offered to help the new mother with her baby sometime. Grimball and Christy entered their vehicle to return home in Lebanon, and Christy drove and Grimball was seated in the front passenger seat. During the trip, Grimball told Christy that she "was never gonna go over there without him just because he didn't want [her] at that house without him." Transcript Volume II at 164. Grimball "was getting very angry" and said "you're lucky I'm smokin' this cigarette or I'd . . . ," Christy said "what," and Grimball "punched [her] twice," "really hard" on the side of her face. *Id*. at 165. According to Christy, "then the third time I slammed my breaks [sic] on and jumped out of the vehicle" and, "[w]hen the third one was coming, I slammed my brakes on because I mean I wasn't being able to protect myself" and "I slammed the breaks [sic] on and jumped out of the vehicle and I jumped down in the ditch cause I assumed I'd be safe there." *Id*. at 165-166. While Christy was in the ditch, Grimball moved into the driver's seat and "turned and started driving at [her] with the car." *Id*. at 166. According to Christy, "[h]e drove down into the ditch at me," "I was freaking out and . . . tried to run away from him," "he missed me with the car so then he backed up to come at me again," "by that time, I came around . . . a tree," "he got out of

the vehicle and he came at me again so I hid under this tree," and "he started punching me again and the trees were like blocking him to come through to connect to my face." *Id*. Grimball made contact with Christy when she was hiding behind the tree and said "you're lucky I didn't just kill you." *Id*. at 166. Grimball said "get in the car now," Christy was hesitant, and he said "get in it now cause we're in these people's yard with the car." *Id*. at 167. Christy entered the passenger seat, and Grimball drove back towards Lebanon. At some point, he drove up behind a car and said "I'm just gonna hit this car," and Christy grabbed the steering wheel so their vehicle "swerved around them." *Id*. at 168.

[3] Grimball drove past where he would normally turn to return home. He slammed on the brakes near Club 39, and Christy unlocked her door, jumped out of the car, and ran across the street to a store. She fell to her knees, was shaking and crying, and said "he's trying to kill me" or "he's going to kill me." *Id*. at 171, 179. A person named Adam, whom Christy knew but had not seen in six or eight months, approached Christy, tried to comfort her, and said no one was going to kill her. Christy "was like and then he's gonna try to kill you too" and ran. *Id*. at 171. She looked back and saw Grimball "coming across the street with his fist like mad, power walking," and Grimball "just started beating the crap out of" Adam using his fists. *Id*. at 173-174. Grimball struck Adam in the face, Christy screamed at Grimball to stop, Grimball was "nailing [Adam's] face," and Adam was "in a fetal position by the car" and looked like he was "trying to hide underneath the car." *Id*. at 175. Grimball eventually

stopped and ran towards Club 39. Adam had blood all over his face, a broken nose, and a concussion. Christy's head and face hurt, and she had bruising, a black eye, and ringing in her ear for six months.

[4] Lebanon Police Officer Tyreese Griffin entered Club 39 and found Grimball standing several feet from the bar. Officer Griffin ordered him to place his hands behind his back, and Grimball said "[w]hat's going on" and did not comply. *Id*. at 231. Officer Griffin explained to Grimball that he was being detained and that he needed to place his hands behind his back, Grimball asked if he was being arrested, and Officer Griffin again explained that he was not being arrested but that he was being detained. Grimball did not follow Officer Griffin's commands, walked toward the bar rail, and continued to ask "[w]hat's going on," and Officer Griffin repeated the command to place his hands behind his back and said that he was being detained. *Id*. Grimball said, "I'm going to listen, I'm going to sit down," and Officer Griffin told him, "[n]o, I need you to put your hands behind your back." *Id*. at 233. Grimball started to pull up a glass bottle to take a drink, and Officer Griffin grabbed the bottle from him. Officer Griffin attempted to place the bottle on the bar, the contents spilled, and according of Officer Griffin, Grimball "turned towards me and I tried to grab for his hand for control" and, "at that point, we continued to jostle for control and we both fell down to the ground." *Id*. Officer Griffin "had ahold of his hand, and he was trying to pull away from [him] at that point." *Id*. at 234. Grimball fell on his stomach or side, Officer Griffin "was able to get on his back and his waist" while holding one of his hands, and Officer Griffin stated "he

continued to try to turn into me" and "continued to turn into me as he tried to rip his right arm away." *Id*. at 235. Officer Griffin kept telling Grimball to place his hands behind his back, and Grimball never complied and "pulled both arms away." *Id*. at 236.

[5] Zionsville Police Officer Jacob Shelburne entered the bar and assisted Officer Griffin in obtaining control of Grimball's arms and handcuffing him. Other officers arrived at the scene. Officer Griffin proceeded to pat down Grimball to check for weapons and then exited the bar to secure his vehicle. After Grimball was secured, Officer Griffin discovered "red markings like bruising" on his arms. *Id*. at 237. Lebanon Police Officers Aaron Carlson and Tyler Winings escorted Grimball from the bar to Officer Griffin's vehicle. Officer Carlson held Grimball's right arm, and Officer Winings held his left arm. As the officers escorted him out of the bar, Grimball "was actively moving trying to break [the officers'] hands free," and Officer Carlson stated "I think he even maybe spit on another officer at . . . that time" and "[w]e were in close contact with him and he was, in my opinion, trying to escape from our control." *Id*. at 208. Officer Winings stated that Grimball was belligerent, argumentative, physically pulling away from him, and "pulling away and thrashing around." Transcript Volume III at 67.

[6] The State charged Grimball, as amended, with: Count I, intimidation as a level 6 felony[1]; Count II, domestic battery as a class A misdemeanor; Count III, battery resulting in bodily injury as a class A misdemeanor; Count IV, resisting law enforcement as a level 6 felony[2]; and Count V, resisting law enforcement as a class A misdemeanor.[3] In February 2022, the court held a jury trial. The jury found Grimball guilty on all counts. The trial court sentenced Grimball to an aggregate sentence of five and one-half years.

Discussion

[7] Grimball asserts the evidence is insufficient to support his convictions for intimidation and resisting law enforcement. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Jordan v. State*, 656 N.E.2d 816, 817 (Ind. 1995), *reh'g denied*. We look to the evidence and the reasonable inferences therefrom that support the verdict. *Id*. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *Id*. It is well established that circumstantial

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[1] The State alleged Grimball "did communicate a threat to commit a forcible felony to Christy Grimball, another person, with the intent that Christy Grimball be placed in fear that the threat will be carried out to wit: said he would kill her . . . ." Appellant's Appendix Volume III at 2.

[2] The State alleged Grimball "did knowingly or intentionally forcibly resist, obstruct or interfere with Tyreese Griffin, a law enforcement officer, while said officer was lawfully engaged in his duties as a law enforcement officer and in committing said act [Grimball] inflicted bodily injury on or otherwise caused bodily injury to Tyreese Griffin, to-wit: redness and/or pain to the forearms . . . ." Appellant's Appendix Volume III at 3.

[3] The State alleged Grimball "did knowingly or intentionally forcibly resist, obstruct or interfere with Tyler Winnings [sic], a law enforcement officer, while said officer was lawfully engaged in his duties as a law enforcement officer . . . ." Appellant's Appendix Volume III at 3.

evidence will be deemed sufficient if inferences may reasonably be drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt. *Pratt v. State*, 744 N.E.2d 434, 437 (Ind. 2001).

A. *Intimidation*

[8] Grimball argues that he "did not communicate a threat with the intent to place Christy Grimball in fear that the threat of a forcible felony would be carried out because there was no threat" and his statement "you're lucky I didn't just kill you" related to past conduct and was not a threat. Appellant's Brief at 24.

[9] At the time of the offense, Ind. Code § 35-45-2-1 provided in part that a person "who communicates a threat with the intent: . . . (4) that another person be placed in fear that the threat will be carried out, if the threat is a threat described in . . . subsection (d)(1) through (d)(5) . . . commits intimidation, a Class A misdemeanor," and that the offense is a level 6 felony if "the threat is to commit a forcible felony."[4] Ind. Code § 35-45-2-1(d) provided that a "threat" was "an expression, by words or action, of an intention to: (1) unlawfully injure the person threatened or another person, or damage property; (2) unlawfully subject a person to physical confinement or restraint; [or] (3) commit a crime . . . ." A "forcible felony" is a felony "that involves the use or threat of force against a

[4] Subsequently amended by Pub. Law No. 5-2022, § 6 (eff. July 1, 2022).

human being, or in which there is imminent danger of bodily injury to a human being." Ind. Code § 35-31.5-2-138.

[10] Whether a communication is a threat is an objective question for the trier of fact. *Newell v. State*, 7 N.E.3d 367, 369 (Ind. Ct. App. 2014), *trans. denied*. "A threat is punishable if the speaker 'intend[s] his communications to put his targets in fear for their safety, and that the communications were likely to actually cause such fear in a reasonable person similarly situated to the target.'" *McBride v. State*, 128 N.E.3d 531, 537 (Ind. Ct. App. 2019) (citing *Brewington v. State*, 7 N.E.3d 946, 964 (Ind. 2014), *reh'g denied*, *cert. denied*, 574 U.S. 1077, 135 S. Ct. 970 (2015)), *trans. denied*. "The 'intent' that matters is not whether the speaker really means to carry out the threat, but only whether he intends it to 'plac[e] the victim in fear of bodily harm or death.'" *Brewington*, 7 N.E.3d at 963. We note that intent is a mental function which must be determined from a consideration of the defendant's conduct and the natural and usual consequences of such conduct, and the trier of fact must usually resort to reasonable inferences based upon an examination of the surrounding circumstances. *Hendrix v. State*, 615 N.E.2d 483, 485 (Ind. Ct. App. 1993). Threats, particularly veiled threats, "are heavily dependent on all of the contextual factors." *See Brewington*, 7 N.E.3d at 964 (citation and quotations omitted). In determining whether a statement is a true threat, we may consider the content of the statement, its context, and the reaction of the listeners. *See Newell*, 7 N.E.3d at 369 (citing *Watts v. United States*, 394 U.S. 705, 708, 89 S. Ct. 1399 (1969)).

[11] The evidence most favorable to the verdict reveals that Grimball punched Christy in the face several times while she was driving, she stopped and exited the vehicle and ran into a ditch, Grimball drove the vehicle directly toward her but missed her, and he exited the vehicle, approached her, and punched her. Christy testified that Grimball told her "[y]ou're lucky I didn't just kill you" and ordered her to "get in the car now." Transcript Volume II at 166-167. She further testified that, as Grimball was driving, he attempted to collide with another vehicle and that, when he slammed on the brakes near Club 39, she unlocked her door, jumped out of the vehicle, ran toward the store, fell to knees shaking and crying, and said "he's trying to kill me" or "he's going to kill me." *Id*. at 171, 179. Grimball then attacked and repeatedly struck Adam, leaving him with a concussion and a broken nose.

[12] A reasonable finder of fact could conclude, in light of all of the contextual factors, that Grimball communicated a threat to commit a forcible felony which was intended to place, and did place, Christy in fear that the threat would be carried out. Christy's reaction indicated that she took the threat seriously. Based on the record, we conclude the State presented evidence of probative value from which the jury could find that Grimball committed intimidation as a level 6 felony. *See Newell*, 7 N.E.3d at 369 (finding a reasonable finder of fact could conclude the defendant's statements constituted a threat of physical harm and observing the reaction to the defendant's statement was immediate and indicated it was taken seriously).

B. *Resisting Law Enforcement*

[13] Grimball asserts that, while he "didn't necessarily cooperate with the placement of handcuffs on his hands," his actions did not constitute "forcibly resisting," Officer Griffin did not sustain bodily injury, and he cannot be convicted of both resisting law enforcement convictions. Appellant's Brief at 30.

[14] A person who knowingly or intentionally 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 as a class A misdemeanor, and the offense is a level 6 felony if, while committing the offense, the person inflicts bodily injury on or otherwise causes bodily injury to another person. Ind. Code § 35-44.1-3-1. Bodily injury means any impairment of physical condition, including physical pain. Ind. Code § 35-31.5-2-29.

[15] The Indiana Supreme Court has stated the word "forcibly" means "something more than mere action." *Spangler v. State*, 607 N.E.2d 720, 724 (Ind. 1993). It held "one 'forcibly resists' law enforcement when strong, powerful, violent means are used to evade a law enforcement official's rightful exercise of his or her duties." *Id.* at 723. "[A]ny action to resist must be done with force in order to violate this statute. It is error as a matter of law to conclude that 'forcibly resists' includes all actions that are not passive." *Id.* at 724. "But even so, the statute does not demand complete passivity." *Walker v. State*, 998 N.E.2d 724, 726 (Ind. 2013) (citation and quotations omitted). In *Graham v. State*, the Court clarified that "[t]he force involved need not rise to the level of mayhem." 903 N.E.2d 963, 965 (Ind. 2009). "In fact, even a very 'modest level of resistance' might support the offense." *Walker*, 998 N.E.2d at 727 (quoting *Graham*, 903

N.E.2d at 966 (“even ‘stiffening’ of one’s arms when an officer grabs hold to position them for cuffing would suffice”)). The Indiana Supreme Court has held:

> So in summary, not every passive—or even active—response to a police officer constitutes the offense of resisting law enforcement, even when that response compels the officer to use force. Instead, a person “forcibly” resists, obstructs, or interferes with a police officer when he or she uses strong, powerful, violent means to impede an officer in the lawful execution of his or her duties. But this should not be understood as requiring an overwhelming or extreme level of force. The element may be satisfied with even a modest exertion of strength, power, or violence. Moreover, the statute does not require commission of a battery on the officer or actual physical contact—whether initiated by the officer or the defendant. It also contemplates punishment for the active *threat* of such strength, power, or violence when that threat impedes the officer’s ability to lawfully execute his or her duties.

Id.

[16] The record reveals that Officer Griffin repeatedly ordered Grimball to place his hands behind his back, Grimball did not comply, Officer Griffin grabbed the bottle from Grimball’s hand and then tried to grab his hand, and Officer Griffin and Grimball “continued to jostle for control” and fell to the ground. Transcript Volume II at 233. Officer Griffin testified that he “had ahold of [Grimball’s] hand, and he was trying to pull away from me at that point,” that he was able to move onto Grimball’s back and “he continued to turn into me as he tried to rip his right arm away,” and that Grimball “actively . . . pulled both arms away.” *Id*. at 234-236. After Grimball was placed in handcuffs, Officers

Carlson and Winings escorted him by the arms from the bar to Officer Griffin's vehicle. Officer Carlson testified that Grimball tried to escape the officers' control, and Officer Winings testified that he "was pulling away from me" and he was "thrashing around." Transcript Volume III at 67. We conclude evidence of probative value was admitted from which a reasonable trier of fact could find that Grimball exercised at least a modest exertion of strength, power, or violence that impeded Officer Griffin and later Officer Wining in the execution of their duties. *See Lopez v. State*, 926 N.E.2d 1090, 1093-1094 (Ind. Ct. App. 2010) (holding the evidence was sufficient to show the defendant acted with the requisite force where the defendant refused to stand and "started to pull away" when the officers tried to physically pull him up from the couch and where the officers were unable to pull his arms out from under him), *trans. denied*; *Johnson v. State*, 833 N.E.2d 516, 518-519 (Ind. Ct. App. 2005) (holding the defendant forcibly resisted officers by turning away and pushing away with his shoulders as they attempted to search him, refusing to enter the transport vehicle, and stiffening up). In addition, Officer Griffin testified that he had red markings like bruising on his arms. The evidence is sufficient to support Grimball's convictions for resisting law enforcement.

[17] As for Grimball's argument that he cannot be convicted of both resisting law enforcement convictions, substantive double jeopardy claims "principally arise in one of two situations: (1) when a single criminal act or transaction violates multiple statutes with common elements, or (2) when a single criminal act or transaction violates a single statute and results in multiple injuries." *Powell v.*

State, 151 N.E.3d 256, 263 (Ind. 2020). The latter scenario involves a two-step process. *Id.* at 264. "First, we review the text of the statute itself. If the statute, whether expressly or by judicial construction, indicates a unit of prosecution, then we follow the legislature's guidance and our analysis is complete." *Id*. "The unit of prosecution is the minimum action required to commit a new and independent violation of a criminal statute." *Jones v. State*, 159 N.E.3d 55, 63 (Ind. Ct. App. 2020), *trans. denied*. "[I]f the statute is ambiguous, then we proceed to the second step . . . ." *Powell*, 151 N.E.3d at 264. "Under this second step, a court must determine whether the facts—as presented in the charging instrument and as adduced at trial—indicate a single offense or whether they indicate distinguishable offenses." *Id*. "To answer this question, we ask whether the defendant's actions are so compressed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction." *Id*. (citations and quotations omitted). "If the defendant's criminal acts are sufficiently distinct, then multiple convictions may stand; but if those acts are continuous and indistinguishable, a court may impose only a single conviction." *Id*. a 264-265.

[18] A person commits resisting law enforcement as a class A misdemeanor if the person forcibly resists a law enforcement officer while the officer is lawfully engaged in the execution of the officer's duties. Ind. Code § 35-44.1-3-1(a). The offense is a level 6 felony if, while committing the offense, the person causes bodily injury to another person. Ind. Code § 35-44.1-3-1(c). Also, Ind. Code § 35-44.1-3-1(i) provides, "[a] person who commits an offense described

in subsection (c) commits a separate offense for each person whose bodily injury . . . is caused by a violation of subsection (c)."

[19] The record establishes that Grimball struggled with Officer Griffin at some length in Club 39 which resulted in bodily injury to Officer Griffin. After Grimball was placed in handcuffs, Officer Griffin proceeded to pat him down to check for weapons and then exited the bar to secure his police vehicle. Then, Officers Carlson and Winings escorted Grimball from the bar to Officer Griffin's vehicle. While they did so, Grimball pulled away from Officer Winings and tried to break free from the officers' control. We cannot say under the circumstances that the facts as adduced at trial were so compressed in terms of time, place, singleness of purpose, and continuity of action as to indicate a single transaction. *See Jones*, 159 N.E.3d at 64 (finding that two acts of aggravated battery did not constitute a single transaction under *Powell* and observing the acts did not occur at the same time, one occurred near a kitchen and the other in a bathroom, and the acts were not part of a continuous attack but a punctuated one).

[20] For the foregoing reasons, we affirm Grimball's convictions.

[21] Affirmed.

Altice, J., and Tavitas, J., concur.