

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

George Ronald Cross,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

September 17, 2021

Court of Appeals Case No.
21A-CR-202

Appeal from the Hendricks Circuit
Court

The Honorable Dan Zielinski,
Judge

Trial Court Cause No.
32C01-1908-F6-928

Robb, Judge.

Case Summary and Issue

- [1] Following a jury trial, George Cross was found guilty of battery against a public safety official, a Level 6 felony, and resisting law enforcement, a Class A misdemeanor. Cross now appeals, raising one issue which we restate as, whether there was sufficient evidence to support his convictions. Concluding the State presented sufficient evidence to support Cross' convictions, we affirm.

Facts and Procedural History

- [2] On the night of August 26, 2019, Sergeant Nathan Nolin of the Plainfield Police Department was patrolling the 3400 block of Avon Avenue. Sergeant Nolin was looking for Christopher Bassett, a man with a warrant out for his arrest who was known to frequent a residence located on Avon Avenue. On the night in question, Sergeant Nolin noticed Bassett's minivan parked across the street and he began searching the area for Bassett. When Sergeant Nolin observed any movement from people in the area, he initiated conversations in order to ascertain whether they had seen anyone, including Bassett, coming to or leaving from the residence.
- [3] At approximately 10:36 p.m., Sergeant Nolin observed a vehicle pull into the residence's driveway. As the driver exited, it was apparent to Sergeant Nolin that the driver was not Bassett and Sergeant Nolin introduced himself. The driver was startled and Sergeant Nolin, in attempt to calm him down, asked the driver his name and indicated that he was not there for the driver, but rather, he

was there for Bassett. The driver identified himself as George Cross and the two proceeded to discuss the current occupants of the residence. Despite reassurances that Sergeant Nolin was not there for Cross, Cross appeared to become more nervous the longer the two talked, as he was breathing heavily, looking past Sergeant Nolin, and scanning from left to right.

[4] Cross' behavior combined with their location outside of a residence where a wanted man was believed to be located caused Sergeant Nolin to become concerned that Cross was engaged in illegal activity. Sergeant Nolin asked Cross if he could perform a pat down of Cross for weapons and Cross, who was wearing baggy clothing and exhibiting a bulge in his left pocket, consented. Sergeant Nolin started the pat down on Cross' left side and identified the bulge to be a large sum of cash. As Sergeant Nolin moved to Cross' right side, Cross struck Sergeant Nolin in the chest and ran away. The blow hit Sergeant Nolin's taser located in the tactical vest that covered his chest. Sergeant Nolin was startled, but quickly gave chase, commanded Cross to stop, and indicated that Cross would be tased. As Sergeant Nolin reached for his taser, he felt the taser fall apart in his hand. Sergeant Nolin looked down to ascertain the problem and in doing so fell into Avon Avenue. Sergeant Nolin picked himself up and reinitiated his chase of Cross, but Cross ran into a wooded area. Sergeant Nolin suspended the chase and Cross was apprehended at a later time.

[5] A portion of the events that occurred once Cross pulled into the driveway was captured on a security camera located on the outside of the residence. The video footage depicts the moment Cross' vehicle pulls into the driveway and

concludes with Sergeant Nolin beginning to give chase. The video is grainy and the lighting is poor due to recording at night. Cross' strike is obscured by Sergeant Nolin who has his back to the camera, but the video does show Sergeant Nolin stumbling backwards after the strike and Cross running away. Sergeant Nolin and Cross are seen running out of view of the camera and the video ends.

[6] The State charged Cross with battery against a public safety official, a Level 6 felony, and resisting law enforcement, a Class A misdemeanor, and filed a sentencing enhancement against Cross as an habitual offender. At Cross' jury trial, the State offered Sergeant Nolin's testimony of the incident and the security camera footage of the incident as evidence. The jury found Cross guilty of battery against a public safety official and resisting law enforcement. Cross later admitted that he was an habitual offender. The trial court sentenced Cross to one and one-half years, enhanced by two years for the habitual offender finding. Cross now appeals.

Discussion and Decision

Sufficiency of Evidence

I. Standard of Review

[7] When reviewing the sufficiency of the evidence needed to support a criminal conviction, we do not assess witness credibility or reweigh the evidence. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). Rather, we consider only the

probative evidence supporting the verdict and reasonable inferences therefrom. *Id.* We consider conflicting evidence most favorably to the verdict. *Madden v. State*, 162 N.E.3d 549, 556 (Ind. Ct. App. 2021). We will affirm the conviction unless “no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Drane*, 867 N.E.2d at 146 (quotation omitted). The evidence need not overcome every reasonable hypothesis of innocence. *Madden*, 162 N.E.3d at 556. Instead, evidence is sufficient if an inference may be reasonably drawn that supports the verdict. *Id.* The uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal. *Id.* at 556-57.

II. Evidence of Battery and Resisting Law Enforcement

[8] To sustain a conviction for battery against a public safety official, the State must have proved beyond a reasonable doubt that Cross knowingly or intentionally touched Sergeant Nolin in a rude, insolent, or angry manner while Sergeant Nolin was engaged in his official duty. Ind. Code § 35-42-2-1(c)(1), (e)(2). Additionally, to sustain a conviction for resisting law enforcement, the State must have proved beyond a reasonable doubt that Cross knowingly or intentionally forcibly resisted Sergeant Nolin while Sergeant Nolin was lawfully engaged in the execution of his duties as an officer. Ind. Code § 35-44.1-3-1(a)(1). On appeal, Cross only argues that he did not strike Sergeant Nolin and therefore, could not have touched Sergeant Nolin for purposes of battery or forcibly resisted Sergeant Nolin for purposes of resisting law enforcement. In fact, Cross admits that if the strike did occur, then he would be guilty of both

battery against a public safety official and resisting law enforcement. *See* Appellant's Brief at 7.

[9] Cross contends that the security camera footage indisputably contradicts the jury's verdict. Generally, appellate review gives "almost total deference" to the fact finder's factual determinations regarding credibility of a witness and the weight of evidence. *Quinn v. State*, 126 N.E.3d 924, 927 (Ind. Ct. App. 2019) (quoting *Love v. State*, 73 N.E.3d 693, 699 (Ind. 2017)). An exception exists in instances where video evidence indisputably contradicts the fact finder's determination. *Love*, 73 N.E.3d at 699. This exception applies in circumstances where "no reasonable person could view the video and conclude otherwise." *Id.* To determine whether video evidence indisputably contradicts the fact finder's decision, we consider video quality, which includes graininess, lighting, angle, audio, and whether the video is a complete depiction of the instance in question. *Id.* In a case where the video is not clear, incomplete, or subject to different interpretations, we defer to the fact finder's interpretation. *Id.* at 699-700.

[10] Here, the security camera footage does not indisputably contradict the jury's verdict. The footage is grainy, the incident took place at night, and the space between Cross and Sergeant Nolin, where the strike took place, cannot be seen. The scene depicted is incomplete and, therefore, subject to different interpretations. As a result, the exception identified in *Love* does not apply. Therefore, we must defer to the jury's interpretation of the security camera footage.

[11] Because the video does not indisputably show that Cross did not touch Sergeant Nolin, we consider the other evidence offered by the State. We begin by noting that any touching, however slight, may constitute battery of a public safety official. *K.D. v. State*, 754 N.E.2d 36, 40 (Ind. Ct. App. 2001). Touching of another person’s apparel may constitute the requisite touching for battery because “a person’s apparel is so intimately connected with the person that it is regarded as part of the person[.]” *Id.* In *Impson v. State*, 721 N.E.2d 1275, 1285 (Ind. Ct. App. 2000), this court held that a slight smacking motion that knocked the glasses off a person’s face without touching the person supported a battery conviction. Further, in *K.D.*, we held that evidence the defendant pulled on an officer’s gun belt was sufficient to show the requisite touching to support a battery of a public safety official conviction. 754 N.E.2d at 40-41.

[12] Here, the State presented Sergeant Nolin’s testimony that he felt Cross strike him in the chest, the blow hit Sergeant Nolin’s taser located in his tactical vest, and the blow was strong enough to damage Sergeant Nolin’s taser. Therefore, sufficient evidence existed to show that Cross struck Sergeant Nolin and to support the jury’s finding of guilt for battery against a public safety official.

[13] Regarding resisting law enforcement, a person forcibly resists when he uses strong, powerful, violent means to evade a law enforcement official engaged in his or her rightful duties. *Johnson v. State*, 833 N.E.2d 516, 517 (Ind. Ct. App. 2005). Merely walking away from law enforcement, leaning away from an officer, or twisting a little bit against an officer does not establish force. *Macy v. State*, 9 N.E.3d 249, 252 (Ind. Ct. App. 2014). At a minimum, forcible

resistance involves some physical interaction with a law enforcement officer. *Id.* at 253. Forcible resistance may occur via threatening gesture or movement that presents an imminent danger of bodily injury. *A.A. v. State*, 29 N.E.3d 1277, 1281 (Ind. Ct. App. 2015).

[14] Sergeant Nolin testified that Cross physically struck him in the chest during a pat down for weapons and that Cross ran away. The strike startled Sergeant Nolin and broke Sergeant Nolin's taser. Considering the evidence most favorable to the verdict, we conclude there was sufficient evidence to support Cross' conviction for resisting law enforcement.

Conclusion

[15] We conclude the State presented sufficient evidence to support Cross' battery against a public safety official and resisting law enforcement convictions. Accordingly, we affirm.

[16] Affirmed.

Bradford, C.J., and Altice, J., concur.