

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEYS FOR APPELLANT

Calvin K. Miller
Steven E. Ripstra
Ripstra Law Office
Jasper, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Tina L. Mann
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Ronda L. Phillips,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 5, 2021

Court of Appeals Case No.
20A-CR-1599

Appeal from the Dubois Circuit
Court

The Honorable Nathan A.
Verkamp, Judge

Trial Court Cause No.
19C01-1909-CM-935

Weissmann, Judge.

- [1] Ronda Phillips argues that the State presented insufficient evidence to support her convictions for disorderly conduct and resisting arrest. Because a reasonable factfinder could conclude that the State proved the elements of both charges beyond a reasonable doubt, we affirm Phillips’s convictions.

Facts

- [2] The night Jalissa Phillips (Jalissa) became a state-certified nursing assistant, she and her “aunt-in-law” Ronda Phillips (Phillips) got into an argument over a dog. Tr. Vol. II p. 17. Phillips was convinced Jalissa’s dog had fleas that were giving Phillips’s brother—Jalissa’s father-in-law, roommate, and nursing charge—a rash.
- [3] The argument quickly became physical. Phillips squeezed the dog’s neck, prompting Jalissa to rush to her pet’s aid. Phillips pushed Jalissa. Jalissa reached for Phillips to catch herself, only to bring Phillips down with her. Phillips hit her head on the counter as she fell, bloodying her nose and forehead.
- [4] Jalissa then called the police to remove Phillips from her home. When the responding police officers decided to arrest Phillips, she was seated on the passenger side of her Dodge Durango with the door ajar. Police told her she was under arrest, but she did not cooperate. Instead, she grabbed a handle inside the car, refused to leave the vehicle, and kicked at the officers attempting to extract her. Two officers pulled her out of the car, where she continued to

struggle. Ultimately, three police officers worked together to handcuff Phillips's hands behind her back.

- [5] Phillips was charged with one count of disorderly conduct for fighting with Jalissa and one count of resisting arrest. At her bench trial, a judge found Phillips guilty on both counts and ordered her to pay \$185 in court costs. Phillips now appeals, arguing that the evidence is insufficient to support her convictions.

Discussion and Decision

- [6] When reviewing the sufficiency of the evidence to support a conviction, we “must consider only the probative evidence and reasonable inferences supporting the verdict.” *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We will not reweigh evidence or reassess witness credibility. *Id.* Instead, we affirm unless no reasonable factfinder could determine that each element of the crime was proved beyond a reasonable doubt. *Id.*

I. Disorderly Conduct

- [7] Phillips argues that the State failed to prove that she recklessly, knowingly, or intentionally engaged in fighting or tumultuous conduct. Ind. Code § 35-45-1-3(a)(1). “Fighting” includes only physical altercations. *Mi.D. v. State*, 57 N.E.3d 809, 813 (Ind. 2016).
- [8] Phillips argues that there is inconsistent evidence that Phillips ever threw a punch, rendering the evidence insufficient to support this conviction. Jalissa

testified that Phillips tried to punch her, while Jalissa’s two middle school-aged children testified that Phillips did not. But “fighting” does not necessarily mean blows. In *Mi.D.*, our Supreme Court determined that deliberately spitting on someone is a “physical altercation” satisfying the “fighting” prong. *Id.* at 814. That decision declined to follow *J.S. v. State*, which Phillips mistakenly relies on here. 843 N.E.2d 1013 (Ind. Ct. App. 2006) (holding that “the mere act of hitting” does not constitute fighting per se; the defendant must also be motivated by hostility), *invalidated by Mi.D.*, 57 N.E.3d 809.

[9] The State presented sufficient evidence that some sort of deliberate physical altercation ensued. Jalissa testified that Phillips pushed her and threw punches. Tr. Vol. II p. 28. Though Jalissa’s daughter did not corroborate the punches, she did testify that Phillips tried to “push my mom away.” *Id.* at 32. The court also heard recordings of Jalissa’s 9-1-1 calls, which are consistent with her in-court testimony. In the calls, Jalissa tells the 9-1-1 operator that Phillips attacked her. Ex. 1. When her call was transferred, Jalissa elaborates, “Did [Phillips] start swinging punches? Yes, she did, so I did.” Ex. 2.

[10] Although there is some conflicting testimony, we must only consider the evidence favorable to the verdict. *Drane*, 867 N.E.2d at 146. Relying on Phillips’s denial that she was the aggressor, or other witness testimony that Phillips never pushed Jalissa, would be to reweigh the evidence and reassess witness credibility, which we cannot do. *Id.* The evidence that Phillips pushed Jalissa is sufficient to support the conviction of disorderly conduct.

II. Resisting Arrest

[11] Phillips next argues that the State failed to prove she used the requisite force to satisfy the resisting law enforcement statute. Phillips was charged under Indiana Code § 35-44.1-3-1(a)(1), which states, “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 . . .” Acting “forcibly” is an essential element of the crime. *Walker v. State*, 998 N.E.2d 724, 726 (Ind. 2013). Resistance can be “forcible” even when a “modest exertion of strength, power, or violence” is applied, though the fact-sensitive nature of this analysis can result in admittedly unpredictable outcomes. *Id.* at 727-28.

[12] Phillips argues that her resistance was passive, not forcible. She compares her actions—leaning away from the arresting officers, gripping a handle inside her car and planting her foot to prevent her exit, tensing her body, attempting to kick officers, and continuing to struggle outside the car to the extent that three officers were needed to handcuff her—to two cases in which evidence was insufficient to support a charge of resisting law enforcement. In the first, *A.C. v. State*, 929 N.E.2d 907 (Ind. Ct. App. 2010), the juvenile defendant passively refused to stand or otherwise assist the arresting officer. In the second, *Graham v. State*, 903 N.E.2d 963 (Ind. 2009), the defendant refused to present his arms for handcuffing.

[13] As previously stated, we must view the evidence in the light most favorable to the verdict. *Drane*, 867 N.E.2d at 146. Through that lens, Phillips’s actions were plainly more forcible than those exhibited by the defendant in either *A.C.* or *Pugh*. Phillips did not merely lean away from officers or fail to present herself for arrest. She wedged herself in her car such that “the whole car was shaking back and forth” as officers tried to pull her out. Tr. Vol. II. p. 62. Phillips struggled enough that three police officers participated in her arrest. Tr. Vol. II p. 49.

[14] Phillips’s level of resistance has much more in common with cases where the evidence was sufficient to support convictions for resisting arrest. *See, e.g., New v. State*, 135 N.E.3d 619, 625 (Ind. Ct. App. 2019) (holding there was sufficient evidence to prove defendant forcibly resisted when she pulled away from the arresting officer and struggled “to the extent that another officer had to step in to assist”); *A.A. v. State*, 29 N.E.3d 1277, 1281 (Ind. Ct. App. 2015) (holding there was sufficient evidence to prove defendant forcibly resisted because although defendant “never actually kicked [the arresting officer], her conduct could nonetheless be construed as a threatening gesture. . .”); *Lopez v. State*, 926 N.E.2d 1090 (Ind. Ct. App. 2010) (holding there was sufficient evidence to prove defendant forcibly resisted because he pulled away from arresting officers and then prevented them from putting his arms behind his back). In keeping with those cases, we hold that there was sufficient evidence for the factfinder to determine that Phillips resisted arrest.

[15] Because both convictions are supported by sufficient evidence, we affirm the trial court.

Mathias, J., and Altice, J., concur.