

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Lacey Evans,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 2, 2022

Court of Appeals Case No.
22A-CR-174

Appeal from the Marion Superior
Court

The Honorable Clayton A.
Graham, Judge

The Honorable Mark Renner,
Magistrate

Trial Court Cause No.
49D33-2106-CM-17004

Robb, Judge.

Case Summary and Issues

- [1] Lacey Evans was convicted of resisting law enforcement as a Class A misdemeanor. Evans now appeals, raising multiple issues for our review which we restate as: (1) whether sufficient evidence supports Evans' conviction, and (2) whether inconsistencies between the trial court's oral sentencing statement and the written sentencing order constitute error. Concluding the State presented sufficient evidence to support Evans' conviction but that inconsistencies exist between the trial court's oral sentencing statement and its written order that should be clarified, we affirm in part and remand.

Facts and Procedural History

- [2] On May 31, 2021, Joseph Deurso contacted the police to report a domestic disturbance at Evans' home. Deurso was in a romantic relationship with Evans and had been given a key to her home. Officer Christopher Frazier of the Indianapolis Metropolitan Police Department was dispatched and when he arrived at Evans' home, Deurso met him in the driveway and requested that Evans be arrested for battery. Officer Frazier then knocked on the front door of the house. Evans opened the door but slammed it shut when Officer Frazier informed her that "she was going to be under arrest for alleged battery[.]" Transcript, Volume II at 24. Officer Frazier continued knocking on the door and instructed Evans to come out, but she refused.

[3] Deurso then unlocked the door with his key but a chain on the door prevented him from opening it all the way. Officer Frazier informed Deurso that he would not force entry, but that Deurso could “force his own door open if he so chose.” *Id.* at 26. Deurso then forced the door open and invited Officer Frazier inside. Once inside, Officer Frazier attempted to handcuff Evans, but she refused to comply with instructions and kept wrenching her arms away. After Officer Frazier was finally able to get her in handcuffs, she “squirmed, flailed about like a fish . . . [and] slam[med] her head against the floor.” *Id.* at 35-36. Evans then refused to walk on her own so Officer Frazier and a second officer had to pick her up and escort her out of the home.

[4] On June 2, 2021, the State charged Evans with domestic battery and resisting law enforcement, both Class A misdemeanors. The matter proceeded to a bench trial where the State moved to dismiss the domestic battery charge, which the trial court granted. At the conclusion of the evidence, the trial court stated Evans resisted arrest at the “initial contact” in the doorway and again once officers entered her home and attempted to handcuff her. *See id.* at 39-40. Therefore, the trial court found her guilty of resisting law enforcement. At the sentencing hearing, the trial court sentenced Evans to 365 days, with 355 days suspended and ten days credited as already executed. Subsequently, the trial court issued a written order that showed Evans was sentenced to 365 days with

five days suspended, 355 days credited as time served, and five days as credit earned.¹ Evans now appeals. Additional facts will be provided as necessary.

Discussion and Decision

I. Sufficiency of the Evidence

A. Standard of Review

[5] When reviewing the sufficiency of the evidence required to support a conviction, we do not reweigh the evidence or judge the credibility of the witnesses. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). Instead, we consider only the evidence supporting the judgment and any reasonable inferences that can be drawn therefrom. *Morris v. State*, 114 N.E.3d 531, 535 (Ind. Ct. App. 2018), *trans. denied*. We consider conflicting evidence most favorably to the judgment. *Silvers v. State*, 114 N.E.3d 931, 936 (Ind. Ct. App. 2018). “We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt.” *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). The evidence need not overcome every reasonable hypothesis of innocence; it is sufficient if an inference may reasonably be drawn from the evidence to support the judgment. *Silvers*, 114 N.E.3d at 936.

¹ Both the oral sentencing and the written order imposed a 180-day probation.

B. Resisting Law Enforcement

[6] Evans challenges the sufficiency of the evidence supporting her resisting law enforcement conviction. The State bears the burden of proving all elements of the charged crime beyond a reasonable doubt. *Taylor v. State*, 587 N.E.2d 1293, 1301 (Ind. 1992); *see also* Ind. Code § 35-41-4-1(a). Indiana Code section 35-44.1-3-1(a)(1) provides in pertinent part: “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 Class A misdemeanor resisting law enforcement.

[7] Our supreme court has stated that under Indiana Code section 35-44.1-3-1,² the word “forcibly” modifies the entire string of verbs – “resists, obstructs, or interferes” – such that to prevail the State must show forcible resistance, forcible obstruction, or forcible interference. *Spangler v. State*, 607 N.E.2d 720, 722-23 (Ind. 1993). A person forcibly resists, obstructs, or interferes 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.

Walker v. State, 998 N.E.2d 724, 727 (Ind. 2013).

² At the time *Spangler* was decided, the resisting law enforcement statute was codified at Indiana Code section 35-44-3-3.

[8] Evans contends that “[p]olice were not lawfully engaged in the execution of official duties when they entered Ms. Evans['] home without a warrant or consent[.]” Brief of Appellant 9. Conversely, the State argues that Evans committed the resisting law enforcement prior to Officer Frazier entering her home. When Officer Frazier arrived at Evans’ home, he knocked on the door, Evans opened the door, Officer Frazier informed her that “she was going to be under arrest for alleged battery, and she slammed the door.” Tr., Vol. II at 24. The State contends this evidence was sufficient to sustain a conviction of resisting law enforcement.³

[9] Evans walking away from Officer Frazier is not enough to establish forcible resistance. *See K. W. v. State*, 984 N.E.2d 610, 612 (Ind. 2013). However, here there is the added action of Evans shutting the door. Therefore, we must determine whether Evans forcibly resisted, obstructed, or interfered when she “slammed the door” on Officer Frazier. Our supreme court has implied that even a very modest level of resistance might support resisting law enforcement. *See Graham*, 903 N.E.2d at 966. And our supreme court has acknowledged that it has “never held that actual physical contact between the defendant and the

³ We note that Evans was not charged under Indiana Code section 35-44.1-3-1(a)(3), under which a person commits resisting law enforcement when she “flees from a law enforcement officer[.]” In *Graham v. State*, the State argued that a defendant committed resisting when they “turned around on the porch to return inside the house, thus ‘fleeing[.]’” 903 N.E.2d 963, 966 (Ind. 2009). However, the defendant was charged with forcibly resisting and our supreme court refused to affirm on grounds that might have been charged and tried. Similarly, Evans was only charged under Indiana Code section 35-44.1-3-1(a)(1), thus we limit our examination to whether Evans shutting the door constituted forcible resistance, obstruction, or interference and not whether it would be considered fleeing.

officer [is] required to sustain a conviction” of the offense. *Walker*, 998 N.E.2d at 727. Generally, when there is no physical contact, the statute’s requirement that the resistance be done “forcibly” is satisfied by “an active threat of such strength, power, or violence when that threat impedes the officer’s ability to lawfully execute his or her duties.” *Id.* (emphasis omitted); see *A.A. v. State*, 29 N.E.3d 1277, 1281 (Ind. Ct. App. 2015) (finding that defendant attempting to kick an officer constituted a threatening gesture); *Pogue v. State*, 937 N.E.2d 1253, 1258 (Ind. Ct. App. 2010) (finding that defendant displaying and refusing to drop a box cutter amounted to a threat of violence sufficient to show he forcibly resisted), *trans. denied*. Threats occur when strength, power, or violence is directed at the officer, or a threatening “gesture or movement” is made in their direction. *Price v. State*, 622 N.E.2d 954, 963 n.14 (Ind. 1993).

[10] However, the threatening gesture need not be overt. See *Tyson v. State*, 140 N.E.3d 374, 378 (Ind. Ct. App. 2020), *trans. denied*. In *Tyson*, the defendant walked away from a police officer while refusing to remove his hands from his pockets. The police officer did not know what was in the defendant’s pockets but perceived any objects as potentially being dangerous. This court concluded that this amounted to a threatening gesture. Here, Officer Frazier had walked up to Evans’ door and was close enough to the doorway that he could knock on the door. Evans then “slammed” the door on him after he informed her that she was under arrest. *Tr.*, Vol. II at 24. We conclude that the action of slamming the door on Officer Frazier was a threatening “gesture or movement” directed at him. *Price*, 622 N.E.2d at 963 n.14. Further, this action was coupled with

Evans retreating into her home where any number of dangerous items could have been kept. Accordingly, Evans “forcibly” resisted, obstructed, or interfered with Officer Frazier’s lawful execution of his duty. Ind. Code § 35-41-4-1(a).

[11] Therefore, the State presented sufficient evidence to support Evans’ resisting law enforcement conviction.⁴

II. Sentencing

[12] Evans argues that the “oral and written sentencing statements conflict and must be remanded for correction of clerical errors.” Br. of Appellant at 17. When oral and written sentencing statements conflict, we examine them together to discern the intent of the sentencing court. *Walker v. State*, 932 N.E.2d 733, 738 (Ind. Ct. App. 2010). We may remand the case for correction of clerical errors if the trial court’s intent is unambiguous. *Id.* (citing *Willey v. State*, 712 N.E.2d 434, 445 n.8 (Ind. 1999) (“Based on the unambiguous nature of the trial court’s oral sentencing pronouncement, we conclude that the Abstract of Judgment and Sentencing Order contain clerical errors and remand this case for correction of those errors.”)).

[13] At the sentencing hearing, the trial court sentenced Evans to 365 days, stating 355 days were suspended and ten days had already been executed.

⁴ Because we have determined that Evans resisted law enforcement prior to Officer Frazier entering her home, we need not address her argument regarding the lawfulness of his entry into her home as she raised it only in the context of her sufficiency of evidence claim.

Subsequently, the trial court issued a written sentencing order sentencing Evans to 365 days but showing five days suspended and 355 days as time served and five days as credit earned. The State acknowledges the discrepancy and agrees with Evans that the case should be remanded for correction. Accordingly, we remand with instructions to the trial court to amend the written sentencing order to correct this conflict.

Conclusion

[14] We conclude there is sufficient evidence to support Evans' conviction. However, the trial court's written sentencing order conflicts with its oral sentencing statement. Accordingly, we affirm in part and remand with instructions.

[15] Affirmed in part and remanded.

Pyle, J., concurs.

Weissmann, J., dissents with separate opinion.

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Lacey Evans,
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Weissmann, Judge, dissenting.

[16] I do not view Evans’ act of slamming her door as forcible resistance, and I find insufficient evidence that Officer Frazier was lawfully engaged in the execution of his duties when Evans forcibly resisted her in-home arrest. Therefore, I respectfully dissent.

[17] “When the ‘force’ element of a resisting-law-enforcement conviction is based on a threat directed at a law-enforcement officer, there must be objective evidence that the defendant’s actions were threatening.” *Tyson v. State*, 149 N.E.3d 1186 (Ind. 2020) (Rush, J., dissenting from denial of transfer); *see, e.g., Walker v. State*, 998 N.E.2d 724 (Ind. 2013) (finding threat where defendant walked toward officer with fists clenched in an aggressive manner); *A.A. v. State*, 29 N.E.3d 1277 (Ind. Ct. App. 2015) (finding threat where defendant attempted to kick officer); *Pogue v. State*, 937 N.E.2d 1253 (Ind. Ct. App. 2010) (finding threat

where defendant displayed box cutter and refused officer's order to drop it); *but see Tyson v. State*, 140 N.E.3d 374 (Ind. Ct. App. 2020) (finding threat where defendant failed to remove hands from pockets while walking away from officer), *trans. denied*.

[18] In this case, there is no objective evidence that Evans' act of closing the door was threatening towards Officer Frazier. "The door was open only slightly" when Evans "slammed" it. Tr. Vol. II, p. 24. And the record does not show that Officer Frazier was in danger of being struck by the closing door. There also is no evidence that Officer Frazier perceived any danger in Evans' door slam or her retreat into the house. *See Tyson*, 140 N.E.3d at 378 (relying on officer's subjective perception of danger in finding threat). Rather, the record simply reveals that Officer Frazier "continued to knock on the door" before presenting Deurso with his "options." Tr. Vol. II, p. 24. Deurso insisted on Evans' arrest and, ultimately, forced the door open himself and invited Officer Frazier to enter. *Id.*

[19] Because I part ways with the majority as to Evans' act of closing the door, I would address Evans' argument that her subsequent acts of forcible resistance do not support her resisting law enforcement conviction. Evans does not dispute that she "violently pulled away," "squirmed," and "flailed about like a fish" as Officer Frazier tried to handcuff her after entering her home. *Id.* at 35. Instead, Evans contends Officer Frazier was not lawfully engaged in the execution of his duties when she committed these forcible acts.

[20] Evans specifically claims that her warrantless in-home arrest was a violation of Article 1, Section 11 of the Indiana Constitution. This state constitutional provision protects citizens from unreasonable searches and seizures. *Hardin v. State*, 148 N.E.3d 932, 937 (Ind. 2020). Whether a search or seizure violates Article 1, Section 11 turns on whether the police conduct was reasonable under the totality of the circumstances. *Carpenter v. State*, 18 N.E.3d 998, 1002 (Ind. 2014). And the State bears the burden of showing the police conduct was reasonable. *Id.*

[21] Here, Officer Frazier conducted a warrantless entry of Evans' home solely to effect her warrantless arrest for Class A misdemeanor battery. Yet the most particularized evidence in the record that a battery occurred is Officer Frazier's testimony that Deurso "wanted to press charges for battery" and "repeatedly stated that he wanted [Evans] arrested for battery." Tr. Vol. II, pp. 24, 31. Deurso may have provided Officer Frazier with specific facts about the alleged battery, but the State only presented his conclusory allegations at trial. I am not convinced this evidence is sufficient to establish that Officer Frazier acted reasonably in entering Evans' home without a warrant to arrest her for a misdemeanor offense.⁵

[22] Ultimately, I would conclude the State failed to prove beyond a reasonable doubt that Evans "forcibly resist[ed]" Officer Frazier while he was "lawfully

⁵ The State voluntarily dismissed the battery charge before trial. Tr. Vol. II, p. 20.

engaged in the execution of [his] duties,” as required by Indiana Code § 35-44.1-3-1(a)(1). I therefore would reverse Evans’ conviction for Class A misdemeanor resisting law enforcement.