

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Tyler Mallory,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

August 23, 2022

Court of Appeals Case No.
22A-CR-375

Appeal from the Marion Superior
Court

The Honorable Christina R.
Klineman, Judge

Trial Court Cause No.
49D17-2106-F6-19542

Pyle, Judge.

Statement of the Case

[1] Tyler Mallory (“Mallory”) appeals, following a bench trial, his conviction for Level 6 felony resisting law enforcement causing bodily injury.¹ Mallory contends that there was insufficient evidence to support his conviction. Concluding that the evidence was sufficient to support Mallory’s conviction, we affirm the trial court’s judgment.

[2] We affirm.

Issue

Whether there is sufficient evidence to support Mallory’s conviction.

Facts

[3] In June 2021, an asset protection officer at a retail store alerted Homecroft Police Officer James Leonard (“Officer Leonard”) of a potential theft. In response, Officer Leonard, who was working at the retail store part-time as a security officer, began to watch the security feeds in the asset protection office. After Officer Leonard watched Mallory pass all points of sale with his cart of items, Officer Leonard approached Mallory and asked him to accompany him to the asset protection office. In response, Mallory ran around the opposite side of his cart in an attempt to flee from Officer Leonard. Officer Leonard grabbed Mallory by his arm to stop him from fleeing. In response, Mallory twisted his

¹ IND. CODE § 35-44.1-3-1.

arm out of Officer Leonard's grasp and struck Officer Leonard on the side of his face and ear. Mallory then ran towards a side door of the retail store. Officer Leonard continued to pursue Mallory while shouting "[p]lease stop[.]" (Tr. Vol. 2 at 43). Mallory continued to flee, and Officer Leonard shouted taser multiple times before tasing Mallory just outside of the side door. Afterward, Officer Leonard placed Mallory in handcuffs and escorted him back to the asset protection office.

[4] The State charged Mallory with Level 6 felony resisting law enforcement causing bodily injury. The trial court held a bench trial in January 2022. The trial court heard the evidence as set forth above. During the State's case-in-chief, the State presented security footage from the store showing Mallory striking Officer Leonard and fleeing through the side door. Additionally, Officer Leonard testified that he had felt immediate pain and a burning sensation after Mallory had hit him on the side of his face and ear.

[5] Mallory testified that he had not intentionally hit Officer Leonard on the side of his face. Additionally, Mallory testified that he had not even known he had hit Officer Leonard. At the conclusion of the bench trial, the trial court stated that "[Mallory] [had] just instinctively thr[own] [his] arm back [be]cause [Mallory] [had been] trying to push [Officer Leonard] away and [Mallory] [had] made contact." (Tr. Vol. 2 at 59). The trial court further stated that Mallory had "yanked away and made contact at the same time" which led the trial court to believe that the State had met its burden. (Tr. Vol. 2 at 59). The trial court

found Mallory guilty of Level 6 felony resisting law enforcement causing bodily injury.

[6] Mallory now appeals.

Decision

[7] Mallory argues that there is insufficient evidence to support his Level 6 felony resisting law enforcement causing bodily injury conviction. Our standard of review for sufficiency of the evidence claims is well settled. We consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not reweigh the evidence or judge witness credibility. *Id.* We will affirm the conviction unless no reasonable fact finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* at 146-47. The evidence is sufficient if an inference may be reasonably drawn from it to support the verdict. *Id.* at 147.

[8] INDIANA CODE § 35-44.1-3-1(a) provides that “[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[.]” However, the statute further provides that 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[.]” I.C. § 35-44.1-3-1(c)(1)(B)(II). The word “forcibly” means “something more than mere action.” *Spangler v. State*, 607 N.E.2d 720, 724 (Ind. 1993). “[O]ne 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 (internal quotation marks and citations omitted).

The forcibly element "may be satisfied with even a modest exertion of strength, power, or violence." *Walker v. State*, 998 N.E.2d 724, 727 (Ind. 2013).

[9] Here, our review of the record reveals that Officer Leonard, after asking Mallory to accompany him to the asset protection office, grabbed Mallory by the arm. In response, Mallory twisted away from Officer Leonard and struck Officer Leonard on the side of his face before fleeing towards a side door. Consequently, there is sufficient evidence of forcibly resisting law enforcement. *See Jordan v. State*, 37 N.E.3d 525, 535 (Ind. Ct. App. 2015) (holding sufficient evidence of forcibly resisting when defendant yanked her shoulder away from officer's grasp, twisted and turned away from officers, and flailed her arms).

[10] Mallory also argues that there is insufficient evidence that he knowingly or intentionally hit Officer Leonard. Mallory directs our attention to the trial court's statements at sentencing. Specifically, the trial court stated that Mallory had "just instinctively thr[own] [his] arm back [be]cause [Mallory] [had been] trying to push [Officer Leonard] away[.]" (Tr. Vol. 2 at 59). In support of his argument, Mallory cites to *Kribs v. State*, 917 N.E.2d 1249 (Ind. Ct. App. 2009) and *Bennett v. State*, 119 N.E.3d 1057 (Ind. 2019). In *Kribs*, our court reversed a conviction for a defendant who had unintentionally carried a firearm located in his jacket pocket through airport security because the State had failed to prove that Kribs intended to carry the firearm into the security checkpoint of the airport. In *Bennett*, our supreme court reversed the revocation of probation

because the trial court, in its findings, negated an element of the offense that contradicted its judgment. Neither of these cases support Mallory's argument that an instinctive act is not a knowing or intentional act and thus, are distinguishable. Mallory provides no cogent argument pointing to any cases or authorities that support the proposition that an instinctive act is not a knowing or intentional act. Thus, he has waived the argument on appeal. *See* Ind. Appellate Rule 46(A)(8).

[11] Based on our review of the evidence presented at Mallory's bench trial, we conclude that there was sufficient evidence from which a reasonable fact finder could have found Mallory guilty of resisting law enforcement and causing bodily injury. Accordingly, we affirm Mallory's conviction.

[12] Affirmed.

Robb, J., and Weissmann, J., concur.