MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Mark K. Leeman
Leeman Law Office
Logansport, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Jodi Kathryn Stein
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Guerby Bien-Aime,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 13, 2021

Court of Appeals Case No. 21A-CR-1605

Appeal from the Cass Superior Court

The Honorable Lisa L. Swaim, Judge

Trial Court Cause No. 09D02-2008-CM-577

Mathias, Judge.

[1] Guerby Bien-Aime appeals his convictions for Class A misdemeanor resisting law enforcement and Class C misdemeanor operating a vehicle while

intoxicated. He also appeals the trial court's entry of consecutive sentences. Bien-Aime raises the following two issues for our review:

I. Whether the State presented sufficient evidence to support his conviction for resisting law enforcement.

II. Whether the trial court erred when it imposed consecutive sentences without stating a reason for that decision.

[2] We affirm Bien-Aime's conviction but reverse the imposition of consecutive sentences and remand for resentencing.

Facts and Procedural History

[3] On August 17, 2020, Logansport Police Department Officer Leann Morales observed a blue passenger vehicle make an erratic movement and turn without signaling. The vehicle also did not have a working license plate light. Accordingly, Officer Morales initiated a traffic stop. As the vehicle was coming to a stop, "it swerved off the roadway" and then "came to a stop." Tr. Vol. 2 p. 28.

[4] Officer Morales approached the driver's window and observed that Bien-Aime was operating the vehicle. While speaking to him, she "detected the odor of an alcoholic beverage on his breath," "he was slurring his spe[ech]," and "[h]is eyes were really red and glassy." *Id.* at 29. When she asked him to step out of the car, he "had an unsteady balance" and kept "calling [Officer Morales] baby." *Id.* at 32. He refused a field sobriety test but took a portable breath test, which indicated "a positive result for alcohol." *Id.*

[5] Officer Morales informed Bien-Aime of the results of the portable breath test, and Bien-Aime "said he was going back to his vehicle." *Id.* at 33. Officer Morales "told him to stop" but "ended up having to place him up against [her] patrol vehicle and place him into handcuffs . . . ." *Id.* As Officer Morales attempted to place Bien-Aime in handcuffs, "[h]e kept on trying to pull away and, because it wasn't like he was in a huge fight or anything like that . . . . He was just trying to passively get back to his vehicle." *Id.* Officer Morales later clarified that Bien-Aime's actions were not passive but that he was "jerking away" from her. *Id.* at 38. In response to his jerking away, Officer Morales "had to redirect him towards" her patrol vehicle, and "he was physically pulling towards his car." *Id.* at 33–34.

[6] As Officer Morales tried to put Bien-Aime into her squad car, he spun around to face her. *Id.* at 34. Bien-Aime "planted his feet" and told Officer Morales that he "would not get into the patrol vehicle." *Id.* While Bien-Aime "was spinning around on [her,]" she "delivered a knee strike to his abdomen . . . to gain compliance." *Id.* at 35. Her maneuver caused Bien-Aime to "hunch[] . . . down" and enabled Officer Morales to "place him . . . into the vehicle." *Id.*

[7] The State charged Bien-Aime with Class A misdemeanor resisting law enforcement and Class C misdemeanor operating a vehicle while intoxicated. After a bench trial at which Officer Morales testified, the court found Bien-Aime guilty as charged. The court then sentenced Bien-Aime to 365 days in the Department of Correction for the Class A misdemeanor conviction and a

consecutive term of sixty days for the Class C misdemeanor conviction. The court awarded Bien-Aime seventy-two days of credit time and then suspended the balance of 353 days to probation.[1] This appeal ensued.

I. The State Presented Sufficient Evidence to Support Bien-Aime's Conviction for Resisting Law Enforcement.

[8] Bien-Aime argues that the State failed to present sufficient evidence to show that he committed Class A misdemeanor resisting law enforcement. In reviewing sufficiency claims, "we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020). "Rather, we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence." *Id.* "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Id.* at 263.

[9] To prove Class A misdemeanor resisting law enforcement, the State was required to show that Bien-Aime knowingly or intentionally "forcibly" resisted, obstructed, or interfered with Officer Morales while she was lawfully engaged

---

[1] Although the trial court's sentencing statement and order do not expressly say so, the court's allocation of Bien-Aime's credit time demonstrates that the sentences were consecutive. Specifically, the court first allocated Bien-Aime's credit time against his sixty-day sentence on the Class C misdemeanor. The court then allocated the remaining twelve days of Bien-Aime's credit time against his 365-day sentence on the Class A misdemeanor. This resulted in a remaining sentence of 353 days. Had the court ordered the 365-day sentence and the sixty-day sentence to be concurrent, the allocation of the seventy-two days of credit time would have reduced the aggregate 365-day sentence to 293 days.

in the execution of her duties. Ind. Code § 35-44.1-3-1(a)(1) (2021). Bien-Aime challenges the State's evidence only for the element of "forcibly." As we have summarized:

> The term "forcibly" is a distinct element of the offense that modifies all three verbs "resists, obstructs, or interferes." *See K.W. v. State*, 984 N.E.2d 610, 612 (Ind. 2013). It 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. "[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." *K.W.*, 984 N.E.2d at 612. In *Graham*, our supreme court clarified that "[t]he force involved need not rise to the level of mayhem." *Graham v. State*, 903 N.E.2d 963, 966 (Ind. 2009). In fact, even a very modest level of resistance might support the offense. *Id.* at 965 ("'stiffening' of one's arms when an officer grabs hold to position them for cuffing would suffice.")[.]

Tyson v. State, 140 N.E.3d 374, 377 (Ind. Ct. App. 2020), *trans. denied*. Our supreme court has clarified that "[m]erely walking away from a law-enforcement encounter, leaning away from an officer's grasp, or twisting and turning a little bit against an officer's actions do not establish 'forcible' resistance." *K.W.*, 984 N.E.2d at 612 (quotation marks omitted) (discussing *Spangler*, 607 N.E.2d at 724; *A.C. v. State*, 929 N.E.2d 907, 912 (Ind. Ct. App. 2010); and *Ajabu v. State*, 704 N.E.2d 494, 495–96 (Ind. Ct. App. 1998)).

[10] The State presented sufficient evidence to show that Bien-Aime forcibly resisted Officer Morales. Officer Morales testified that Bien-Aime "jerk[ed] away" from her while she was trying to handcuff him. Tr. Vol 2, p. 38. She testified that she had to "place him up against [her] patrol vehicle" to get the handcuffs on him. *Id.* at 33. Instead of complying with the officer's direction to get inside her vehicle, Bien-Aime "planted his feet" and "spun around" to face her. *Id.* at 34.

[11] Bien-Aime focuses on Officer Morales's testimony that he was "passively" not complying. *Id.* at 33, 38. But Officer Morales clarified that what she meant was that Bien-Aime did not engage her "in a huge fight" but that he was still using some strength to "jerk[] away" from her. *Id.* at 33, 38. Bien-Aime's argument on this issue is merely a request for this court to reweigh the evidence, which we will not do. The State's evidence established that Bien-Aime used at least a modest level of strength to resist Officer Morales. Therefore, the State presented sufficient evidence to support Bien-Aime's conviction for Class A misdemeanor resisting law enforcement.

II. The Trial Court Failed to State a Reason for Imposing Consecutive Sentences.

[12] Bien-Aime also argues that the trial court erred when it did not state a reason for imposing consecutive sentences. The State concedes that Indiana Code section 35-50-1-2(c) required the trial court to state a reason for imposing consecutive sentences and that the court here did not do so. As our supreme court has stated:

> Precedent requires that a trial court "include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence," *Anglemyer v. State*, 868 N.E.2d 482, 490–91 (Ind.2007), including the reasons for imposing consecutive sentences, *see, e.g., Ortiz v. State*, 766 N.E.2d 370, 377 (Ind. 2002); *Smith v. State*, 474 N.E.2d 71, 73 (Ind. 1985); *see also* Ind. Code § 35-50-1-2. We choose to remand to the trial court for clarification of its sentencing decision and preparation of a new sentencing order. *See Windhorst v. State*, 868 N.E.2d 504, 507 (Ind. 2007), *reh'g denied*.

Bowen v. State, 988 N.E.2d 1134, 1134–35 (Ind. 2013) (per curiam). Likewise, precedent required the court to state its reason for imposing consecutive sentences here, which the court did not do. Accordingly, we reverse Bien-Aime's sentence and remand for resentencing.

Conclusion

[13] In sum, we affirm Bien-Aime's conviction for Class A misdemeanor resisting law enforcement. However, we hold that the trial court erred when it failed to state a reason for imposing consecutive sentences. We therefore reverse Bien-Aime's sentence and remand for resentencing.

[14] Affirmed in part, reversed in part, and remanded for resentencing.

Bailey, J., and Altice, J., concur.