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IN THE
COURT OF APPEALS OF INDIANA

Jerry C. Coleman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 29, 2022

Court of Appeals Case No.
21A-CR-2877

Appeal from the Orange Circuit
Court

The Honorable Steven L. Owen,
Judge

Trial Court Cause No.
59C01-2007-F6-401

Brown, Judge.

[1] Jerry C. Coleman appeals his convictions for resisting law enforcement and unlawful possession or use of a legend drug as level 6 felonies. He asserts the evidence is insufficient to sustain his conviction for resisting law enforcement and the trial court committed fundamental error in admitting evidence of the drugs seized during a stop. We affirm.

Facts and Procedural History

[2] At approximately 6:39 p.m. on July 4, 2020, Indiana State Police Sergeant Chad Dick received a call from dispatch asking him to respond to 75 South in the Hardinsburg area in reference to a male who “was supposedly wanted . . . was breaking out windows and causing damage to a property . . . and supposedly was armed.” Transcript Volume III at 14. Dispatch indicated that the subject informed his stepfather that “if he did call the cops and they showed up on scene he was going to do a suicide by cop.”¹ *Id.* at 44. Orange County Sheriff’s Deputy Ryan Smith responded to a dispatch regarding a complaint from either the property owner or the landlord of the property of a male subject named J.K. with active arrest warrants bashing out windows with a bat and threatening to commit suicide by cop.

[3] Paoli City Police Officers Caleb Andry and Zachary Cook responded to the scene in a marked police vehicle. Deputy Smith also responded to the scene.

¹ Sergeant Dick stated: “Typically what that suicide by cop means is that the subject, if a person says that’s what they’re going to do, they’re going to do something to make us use force, to make us think that our lives are in jeopardy or someone else’s life is in jeopardy.” Transcript Volume II at 69.

When Sergeant Dick responded to the scene in his fully marked police vehicle, the other officers were standing outside of their vehicles. Sergeant Dick asked Officer Andry what was going on and learned that the other officers had arrived just shortly before he arrived. The officers tried to listen “to maybe where this incident was occurring because the property had several different . . . what appeared to be mobile trailers and different outbuildings on it.” *Id.* at 17.

While Sergeant Dick was talking with the other officers, he noticed a man later identified as Coleman driving a 2006 Harley Davidson motorcycle without a helmet and turning onto the road toward the officers at a “real slow speed.” *Id.* at 23. Officer Cook observed the motorcycle “had pulled out of either the driveway or the driveway that connected to it.” *Id.* at 139. Deputy Smith observed the motorcycle pull out of the “next driveway down from the one that [they] were closest to.” *Id.* at 101. Sergeant Dick asked the other officers “is this our guy,” and “nobody knew if this was the person that [they] were looking for here.” *Id.* at 23-24. Officer Cook placed his hands up and yelled at Coleman to stop while Coleman was “within a few feet” of the police vehicles. *Id.* at 147. Coleman proceeded between the police vehicles.² Sergeant Dick again asked if that individual was “our guy” and the other officers did not

² When asked if there was “a lot of room between the cars where this motorcycle went through or describe what that was like,” Deputy Smith answered: “No it, I, I’m not sure the exact distance but close enough that I probably could have taken a step and, and like touched him as he went by.” Transcript Volume III at 102. Officer Andry testified that “we pretty well blocked the entire road, not on purpose just that’s the way our vehicles were positioned.” *Id.* at 122.

know. *Id.* at 24. Sergeant Dick turned on his emergency lights and proceeded to attempt a traffic stop.

[4] At that point, Deputy Smith thought there would be a traffic stop “just right by where [they] were” and that he and the other officers “would just kind of walk over to be [Sergeant Dick’s] cover.” *Id.* at 102. After Sergeant Dick activated his emergency lights, Coleman did not stop, proceeded to the next county road, and proceeded north after accelerating quickly. Deputy Smith heard the motorcycle accelerate, his impression was that the individual was not stopping, and he ran to his vehicle to turn around to assist Sergeant Dick with the pursuit. Deputy Smith communicated with his dispatcher to contact the State Police to determine Sergeant Dick’s location. Officer Andry entered Officer Cook’s vehicle, and they followed Sergeant Dick.

[5] Sergeant Dick turned on his siren and informed dispatch that he had a subject fleeing from him on a motorcycle. Coleman “was fidgeting around” and placing his hands in his pockets as he was driving the motorcycle. *Id.* at 30. Sergeant Dick backed off a bit while still maintaining sight because he feared that Coleman was going to pull out a weapon, turn around, and fire shots.

[6] Coleman turned into a driveway where there were “several houses at it.” *Id.* at 31. Sergeant Dick followed him down to the end of the driveway to a certain address, which he later discovered was the address of Coleman’s mother. Coleman exited his motorcycle and placed his hands back in his pockets. Sergeant Dick drew his pistol and ordered Coleman to remove his hands from

his pockets and get down on the ground. Coleman removed his hands from his pockets, and Sergeant Dick noticed Coleman had something in his hand that fell to the ground. Meanwhile, Officers Andry and Cook who had lost visual sight of Sergeant Dick arrived at the scene.

[7] After the other officers arrived, Sergeant Dick placed Coleman in handcuffs. During a patdown, officers found an identification card and discovered the man was Coleman and not J.K. An officer asked Coleman if he knew J.K., and Coleman said that he did and that he was there earlier and delivered some melons to J.K. Sergeant Dick recovered four white pills inside packaging which fell from Coleman's hands.

[8] Officer Andry discovered that the pills were Gabapentin, a legend drug. Officer Andry read Coleman his *Miranda* rights and Coleman denied knowing "anything about what Gabapentin was." *Id.* at 37. Deputy Smith and the Paoli officers returned to the initial scene and were unable to locate J.K.

[9] On July 6, 2020, the State charged Coleman with Count I, resisting law enforcement as a level 6 felony, and Count II, unlawful possession or use of a legend drug as a level 6 felony.³

³ The State alleged in Count I that Coleman "did knowingly flee from Chad Dick, a law enforcement officer, after said officer identified himself by visible or audible means and visibly or audibly ordered [him] to stop . . ." Appellant's Appendix Volume II at 27. The State also alleged that Coleman was an habitual offender but this allegation was later dismissed.

[10] On November 12, 2020, Coleman filed a motion to suppress all seized evidence. On October 7, 2021, Coleman filed an Amended Motion to Suppress and Request for Hearing and argued that the pursuit, arrest, and search violated the Fourth Amendment of the United States Constitution. On October 27, 2021, the court held a hearing on the motion to suppress and later denied the motion.

[11] In December 2021, the court held a jury trial. The State presented the testimony of Sergeant Dick, Deputy Smith, Officer Andry, and Officer Cook. During cross-examination, Sergeant Dick referred to a map and testified: “I think total from where we were here to there (pointing to map) was over a mile.” *Id.* at 65. He also testified that the LED lights mounted to the top of his vehicle were “very bright” and the “brightest lights that [he] ever had on a police car” and that his siren was the loudest siren he had in any police vehicle in twenty-five years. *Id.* at 22. Deputy Smith testified that it was common for both the Sheriff’s Department and Paoli Police Department to be dispatched to the same location depending on the nature of the call and stated that “Orange County is so rural.” *Id.* at 92. The jury found Coleman guilty as charged. The court sentenced Coleman to two and one-half years for each offense and ordered the sentences to be served consecutive to each other.

Discussion

[12] Coleman argues the State failed to present evidence that law enforcement gave a lawful order for him to stop and cites *Gaddie v. State*, 10 N.E.3d 1249 (Ind. 2014). He also argues the State failed to present evidence that he failed to stop.

He asserts that he drove by police officers in a lawful manner, that he pulled into a driveway and stopped after less than a mile, and that the prosecution presented no evidence that he heard or should have heard the officer yelling at him to stop. He also asserts that Sergeant Dick did not know whether his motorcycle had mirrors.

[13] The State asserts Coleman is requesting that this Court reweigh the evidence. It contends that there was no reason to infer that Coleman’s motorcycle lacked a mirror because federal regulations require motorcycles to have mirrors and Indiana law only makes an exception for motorcycles manufactured before 1956. Appellee’s Brief at 11 (citing Ind. Code § 9-19-7-2.5; 49 CFR § 571.111). It argues that the officers had reasonable suspicion to stop Coleman and that “[e]ven as a matter of traffic safety based on the officers standing in the road and largely blocking the road . . . the officer had authority to direct [Coleman] to stop.” *Id.* at 13 (citing Ind. Code § 9-21-8-1). It contends that concern for the safety of the suspect and the public further supported the officers’ need to identify whether Coleman was the person for whom they were looking.

[14] Generally, when reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. *Jordan v. State*, 656 N.E.2d 816, 817 (Ind. 1995), *reh’g denied*. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. *Id.* We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *Id.*

[15] At the time of the offense, Ind. Code § 35-44.1-3-1 provided “[a] person who knowingly or intentionally . . . flees from a law enforcement officer after the officer has, by visible or audible means, including operation of the law enforcement officer’s siren or emergency lights, identified himself or herself and ordered the person to stop” commits resisting law enforcement and the offense is a level 6 felony if “the person uses a vehicle to commit the offense.”⁴

[16] In *Gaddie*, a police officer responded to a report of a “disturbance” at a residence. 10 N.E.3d at 1252. When he arrived, he saw about eight people standing on the front porch and in the front yard “screaming and yelling.” *Id.* He saw several other people, one of whom was the defendant, walking along a side yard toward the back. *Id.* The officer told the group to return to the front yard with the purpose of watching everyone until back-up arrived. *Id.* Everyone but the defendant complied. *Id.* After back-up arrived, the officer headed toward the back, identified himself as a police officer, and told the defendant to stop. *Id.* The defendant continued walking along the curtilage of the residence toward an alley. *Id.* The officer followed him and, “screaming extremely loud,” repeated his order to stop. *Id.* The defendant looked back two or three times but continued walking. *Id.* The officer radioed for help, and another officer intercepted the defendant at the next street over.

⁴ Subsequently amended by Pub. L. No. 124-2021, § 1 (eff. April 26, 2021); Pub. L. No. 32-2021, § 96 (eff. July 1, 2021); Pub. L. No. 174-2021, § 77 (eff. July 1, 2021).

Id. The trial court found the defendant guilty of resisting law enforcement by fleeing after being order to stop by a law enforcement officer. *Id.*

[17] On appeal, the defendant’s argument focused on whether he had a duty to stop, and the Court viewed his claim “as alleging insufficient evidence to prove the element ‘after the officer has . . . ordered the person to stop.’” *Id.* at 1253. The Court observed that the Fourth Amendment provides that the right of the people to be secure in their persons against unreasonable search and seizure shall not be violated. *Id.* (citing U.S. CONST. amend. IV). The Court held that, “[a]t minimum, the government’s seizure of a citizen must rest on specific, articulable facts that lead an officer to reasonably suspect that criminal activity is afoot.” *Id.* The Indiana Supreme Court held that the “statutory element ‘after the officer has . . . ordered the person to stop’” in Ind. Code § 35-44.1-3-1(a)(3), the statute governing resisting law enforcement by fleeing, “must be understood to require that such order to stop rest on probable cause or reasonable suspicion, that is, specific, articulable facts that would lead the officer to reasonably suspect that criminal activity is afoot.”⁵ *Id.* at 1255.

⁵ The Indiana Supreme Court has held that “the reasonable-suspicion ‘standard takes into account “the totality of the circumstances—the whole picture.”” *Marshall v. State*, 117 N.E.3d 1254, 1261 (Ind. 2019) (quoting *Prado Navarette*, 572 U.S. at 397, 134 S. Ct. 1683 (citation omitted)), *cert. denied*, 140 S. Ct. 113 (2019). “Reasonable suspicion does not require that an officer know a crime occurred beyond a reasonable doubt or even by a preponderance of the evidence.” *Id.* “And so, in order to execute a constitutional traffic stop, ‘officers need only “reasonable suspicion”—that is, “a particularized and objective basis for suspecting” the driver violated the law.’” *Id.* (quoting *Heien v. North Carolina*, 574 U.S. 54, 135 S. Ct. 530, 536 (2014)).

[18] In reversing the conviction, the Court observed that the officer testified that he had responded to “just a disturbance.” *Id.* The Court stated that “[o]ur legislature has not defined a ‘disturbance’ as a crime, and thus a report of a disturbance, without more, is not a sufficient basis upon which to conduct an investigatory stop.” *Id.* The Court also noted that its decision, holding that the offense of resisting law enforcement by fleeing after being ordered to stop requires that an officer’s order to stop be based on probable cause or reasonable suspicion of criminal activity, “should not be understood to necessarily apply to other statutes related to police authority to impinge on individual conduct as part of their community caretaking function.” *Id.* at 1255 n.3 (citing Ind. Code § 9-21-8-1 (2012) (“It is unlawful for a person to knowingly fail to comply with a lawful order or direction of a law enforcement officer invested by law with *authority to direct, control, or regulate traffic.*”) (emphasis added in *Gaddie*); Ind. Code § 12-26-4-1 (2013) (“A law enforcement officer, having reasonable grounds to believe that an individual has a mental illness, is either dangerous or gravely disabled, and is in immediate need of hospitalization and treatment, *may . . . [a]pprehend and transport the individual to the nearest appropriate facility.*”) (emphasis added in *Gaddie*)).

[19] Unlike in *Gaddie*, which involved the report of a mere disturbance, law enforcement here responded to a dispatch regarding a male with active arrest warrants breaking out windows, causing damage to property, and threatening to commit “suicide by cop.” Transcript Volume III at 14. When asked to

describe what he would do after arriving at a scene where dispatch had indicated someone had been threatening suicide by cop, Sergeant Dick testified:

[W]hat we do is obviously try to formulate a plan that's going to keep everybody safe and when you have someone that is saying those threats or, or have been told, you know that is what they are saying um, obviously your sense of awareness is really heightened. The goal of law enforcement is to make sure that everybody safe [sic] um, you don't want anybody to get injured and so um, you know that was going to be our plan, was to formulate a plan.

Id. at 19-20.

[20] The record also reveals that Officer Cook placed his hands up and yelled at Coleman to stop while Coleman was “within a few feet” of the police vehicles, and Coleman proceeded between the police vehicles. *Id.* at 147. When asked if there was “a lot of room between the cars where this motorcycle went through or describe what that was like,” Deputy Smith answered: “No it, I, I’m not sure the exact distance but close enough that I probably could have taken a step and, and like touched him as he went by.” *Id.* at 102. Officer Andry testified that “we pretty well blocked the entire road, not on purpose just that’s the way our vehicles were positioned.” *Id.* at 122. Sergeant Dick, Deputy Smith, and Officer Andry testified that they heard the command to stop. After Sergeant Dick activated his emergency lights, Coleman did not stop, proceeded to the next county road, and proceeded north after accelerating quickly. Deputy Smith heard the motorcycle accelerate, and his impression was that the individual was not stopping. Deputy Smith testified that “once I realized that it

was taking longer than it should to stop if the individual was going to stop then that's when I went and got in my car" *Id.* at 104. Sergeant Dick turned on his siren and informed dispatch that he had a subject fleeing from him on a motorcycle. When asked if there were places to stop, Sergeant Dick testified:

Right, this is a county road so um, I don't know how many times over my career I conducted traffic stops on county roads. . . . [O]n county roads typically, a lot of times people would pick a driveway or they would just stop right in the middle of the road because it's not that heavily, it's not like you're on a highway where cars are coming at high speeds towards you and so if there wasn't a good shoulder people would just stop in the road and your car with the lights on in the back was the deterrent for people to be able to navigate around the traffic stop safely. But through here there's several driveways um, that, so I'd be following Mr. Coleman with my lights and siren on, goes up here (pointing to map) up to this area here um, which is where he pulled into the driveway and came to a stop.

Id. at 29-30. When asked if he had pulled over other motorcycles in his career without a mile pursuit, Sergeant Dick answered affirmatively.

[21] Under these circumstances, we cannot say that Sergeant Dick's order to stop was unlawful or that Coleman's Fourth Amendment rights were violated. We conclude that evidence of probative value was presented from which a

reasonable jury could find Coleman was guilty beyond a reasonable doubt of resisting law enforcement as a level 6 felony.⁶

[22] For the foregoing reasons, we affirm Coleman’s convictions.

[23] Affirmed.

Bradford, C.J., and Mathias, J., concur.

⁶ Coleman also argues that the State violated his right against unreasonable search and seizure under the Fourth Amendment and that this Court should reverse his conviction for unlawful possession of a legend drug as a level 6 felony “because the trial court’s allowance of the drug evidence at trial constitutes fundamental error.” Appellant’s Brief at 18. In light of our conclusion that Sergeant Dick’s order to stop was not unlawful and that Coleman’s Fourth Amendment rights were not violated, we cannot say the admission of the challenged evidence constituted fundamental error.