MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Charles Walters,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 31, 2022

Court of Appeals Case No. 21A-CR-2359

Appeal from the Marion Superior Court

The Honorable Clark Rogers, Judge

Trial Court Cause No. 45D25-2010-CM-32602

Brown, Judge.

[1] Charles Walters appeals his conviction for resisting law enforcement as a class A misdemeanor and asserts the evidence is insufficient to sustain his conviction. We affirm.

Facts and Procedural History

[2] On October 23, 2020, Indianapolis Metropolitan Police Officer Brent McDonald drove past a van in a driveway at an address where he previously found stolen vehicles, ran the license plate, and received information the van had been stolen. Officer McDonald, who was in uniform, parked his marked police vehicle immediately behind the van, exited his vehicle, and walked toward the van, and Walters exited the driver's seat of the van. Officer McDonald ordered Walters to place his hands on the van, and he complied. Officer McDonald "went to handcuff him, grab both arms" and, "[a]t that point, he broke free and ran to the south." Transcript Volume II at 19-20. Officer McDonald ran and tackled Walters.

[3] The State charged Walters with resisting law enforcement as a class A misdemeanor. The court held a bench trial. Officer McDonald testified that he exited his police vehicle and "started walking up to the van" and that Walters "got out of the driver's seat at that time." *Id*. at 19. He testified: "I ordered [Walters] to put his hands on the van." *Id*. When asked "did he comply with that," he replied "[y]es." *Id*. When asked "[w]hat happened after he placed his hands on the van," Officer McDonald testified: "I went to handcuff him, grab both arms. At that point, he broke free and ran to the south." *Id*. at 19-20. The prosecutor asked Officer McDonald why he was placing Walters in handcuffs,

and he testified: "He was operating a stolen vehicle." *Id*. at 20. When asked "[h]ow far did he get after he broke free from you," he replied "[l]ess than twenty feet." *Id*. When asked "[d]id you tell him to stop in that time," he answered: "I don't think I had time. I just ran and tackled him." *Id*. The prosecutor stated "[i]t was a very quick turn of events," and Officer McDonald replied "[y]es." *Id*. When asked "after you were able to catch up to him, what happened," he testified "I grabbed him and tackled him into a vehicle that was in the driveway," and when asked "[d]id he then comply," he replied "[a]fter he fell to the ground and I was on top of him, he complied." *Id*. After the State rested, Walters moved for an involuntary dismissal under Ind. Trial Rule 41(B) arguing Officer McDonald did not have probable cause to detain Walters, and the court denied Walters's motion.

[4] Walters testified that he was at his aunt's house on October 23, 2020, he stayed there somewhat regularly, his aunt's husband was a mechanic who did most of his work from home, there were a lot of vehicles on the lot, and he was vacuuming his aunt's van. He indicated he was not sitting in the front seat of the van. He testified that he was vacuuming, he turned to the side and noticed Officer McDonald walking toward the yard, Officer McDonald asked where he got the vehicle, he replied that it belonged to his aunt, and he walked away to retrieve his aunt. He testified: "I took a few steps and he tackled me." *Id*. at 35. He indicated that Officer McDonald never told him to stop, never told him that he was under arrest, and never tried to place him in cuffs. The court found Walters guilty as charged.

Discussion

[5] Walters asserts the evidence is insufficient to sustain his conviction. He asserts Officer McDonald "admitted he never told [him] to stop." Appellant's Brief at 8. He argues: "There is no evidence [he] saw McDonald's attempt to handcuff him, and he could not, as he placed his hands on the van, following McDonald's command. The conclusion from this record is there is no evidence of McDonald ordering [him] to stop by visible or audible means." *Id*.

[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 do not assess witness credibility or reweigh the evidence. *Id.* We consider conflicting evidence most favorably to the trial court's ruling. *Id.* We will affirm the conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. *Id.*

[7] Ind. Code § 35-44.1-3-1(a) provides:

> A person who knowingly or intentionally:
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> * * * * *
>
> > (3) 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, a Class A misdemeanor . . . .

[8] In *Conley v. State*, the police received a report of a suspected shoplifting in progress, and when the defendant ran out of the store, two police officers in uniform and driving marked police vehicles saw the defendant running across the parking lot. 57 N.E.3d 836, 837 (Ind. Ct. App. 2016), *trans. denied*. One of the officers drove into the defendant's path and held up his hand in the defendant's direction in a gesture to stop running, the officer and the defendant made eye contact, and the defendant continued running. *Id*. The defendant was convicted of resisting law enforcement as a class A misdemeanor. *Id*. On appeal, this Court found the evidence supported a determination that the defendant had reason to know that the officer who gestured to him was a police officer. *Id*. at 838. With respect to the defendant's argument that the officer "failed to issue a proper order to stop" when the officer "merely put his hand up in [the defendant's] direction without any other visual or audible indicator," we observed:

> A police officer's order to stop need not be limited to an audible order to stop. The order to stop may be given through visual indicators. Evidence of a proper visual order to stop is based on the circumstances surrounding the incident and whether a reasonable person would have known that he or she had been ordered to stop.

Id. (citations omitted). We held the evidence demonstrated the officer did, by visible means, order the defendant to stop fleeing, under the circumstances a reasonable person would have interpreted the officer's hand gesture as a visual command to stop, the officer's testimony supported a reasonable inference the

defendant saw the gesture but proceeded to run from the officer, and the State presented sufficient evidence to support the defendant's resisting law enforcement conviction. *Id*. at 839.

[9] In *Spears v. State*, a police officer was driving his private car in civilian clothes when a vehicle nearly struck his car. 412 N.E.2d 81, 82 (Ind. Ct. App. 1980). The officer went around the block, exited his car, and approached the vehicle with his police badge and radio in hand and gun in sight. *Id*. When he was approximately three feet away from the vehicle, it sped away in reverse. *Id*. The defendant was convicted of resisting law enforcement as a class A misdemeanor. *Id*. On appeal, the defendant argued there was no evidence the officer ordered him to stop. *Id*. We found the circumstances surrounding the incident, including the fact the officer approached within three feet of the defendant, indicated that a reasonable person would have known he had been ordered to stop by a police officer. *Id*.

[10] Here, the record reveals Officer McDonald was in uniform, parked his marked police vehicle immediately behind the van, exited his vehicle, and walked toward the van and Walters. Walters does not assert that he did not know or did not have reason to know that Officer McDonald was a police officer. The evidence most favorable to the court's ruling establishes that Officer McDonald "ordered [Walters] to put his hands on the van," Walters "compl[ied] with that," Officer McDonald "went to handcuff [Walters], grab both arms," and, "[a]t that point, [Walters] broke free and ran" until Officer McDonald tackled him. Transcript Volume II at 19-20. Officer McDonald indicated that Walters

was able to run less than twenty feet after he broke free from him. While Officer McDonald may not have given an audible order to stop after Walters "broke free and ran," we note that Officer McDonald had instructed Walters to place his hands on the van and "went to handcuff him, grab both arms." *Id*. at 19-20. We conclude that, under the circumstances, a reasonable person would have interpreted Officer McDonald's instructions and actions as a command to stop, and the evidence supports the reasonable inference Walters understood the command but proceeded to break free and run.

[11] Based upon the record, we conclude that evidence of probative value exists from which a reasonable trier of fact could find Walters guilty beyond a reasonable doubt of resisting law enforcement as a class A misdemeanor.[1]

[12] For the foregoing reasons, we affirm Walters's conviction.

Affirmed.

May, J., and Pyle, J., concur.

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[1] Walters also asserts the trial court erred in denying his motion for dismissal under Trial Rule 41(B). At trial, Walters's counsel argued, "if it's true that the officer told him to stop before he fled, it's an unlawful order because he doesn't have probable cause." Transcript Volume II at 23. Walters does not raise the same argument on appeal; rather, he argues the court erred in denying his motion because the State failed to prove that Officer McDonald visibly or audibly ordered him to stop. For the reasons that the evidence is sufficient to sustain his conviction, we find Walters's argument regarding his motion to dismiss to be unpersuasive.