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IN THE COURT OF APPEALS OF INDIANA

Randy W. Runnells,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 21, 2022

Court of Appeals Case No. 21A-CR-2217

Appeal from the Putnam Circuit Court

The Honorable Matthew L. Headley, Judge

Trial Court Cause No. 67C01-2012-CM-1075

Weissmann, Judge.

[1] Randy Runnells was convicted of criminal trespass and resisting law enforcement after he wandered onto a stranger's porch, refused to leave, and then pulled away from a police officer's grasp while being escorted off the property. Runnells appeals his conviction for resisting law enforcement, arguing that the State failed to prove his resistance was forcible, as required by statute. We agree and reverse Runnells' conviction on that count. However, the trial court seemingly sentenced Runnells on only one of his two convictions. We therefore remand for resentencing on his criminal trespass conviction.

Facts

[2] Late one afternoon in December 2020, Mildred Pearson heard a knocking sound on the glass window of her home's front door. Pearson opened the door to find Runnells standing on her porch. When Pearson asked Runnells if she could help him, Runnells stated: "I'm looking for my mother"; "My mother lives here"; "My mother's upstairs"; and "I need to see my mother." Tr. Vol. II, p. 26. Pearson replied that she was not Runnells' mother and did not know him. She then instructed Runnells to leave and closed the door. But Runnells did not leave. Instead, he sat in a rocking chair on Pearson's porch and began talking to himself.

[3] Pearson called 911, and Putnam County Sheriff's Corporal David Scott Ducker responded to the scene. Corporal Ducker was familiar with Runnells from previous police encounters, the last of which occurred "about a year" earlier. Tr. Vol. II, p. 31. According to Corporal Ducker, Runnells was "physically

resistive" and "in a (sic) possession of a sawed-off shotgun" during their last encounter. *Id.* at 32.

[4] When Corporal Ducker arrived at Pearson's home, Runnells was still sitting on the porch, "talking to himself incoherently." *Id.* Corporal Ducker told Runnells he was not welcome on the property and needed to leave, but Runnells stayed put. Corporal Ducker therefore ordered Runnells to stand up and walk with him to his patrol car. Runnells complied but "started to become very physically agitated," standing up "very quickly" and displaying "agitat[ion] with his arms." *Id.*

[5] While walking to the patrol car, Runnells refused Corporal Ducker's requests to identify himself and provide identification. At that point, considering his last encounter with Runnells, Corporal Ducker determined it would be safest to place Runnells in handcuffs "for the investigation." *Id.* at 33. Runnells, however, resisted by twice "pull[ing] away" as Corporal Ducker tried to handcuff him. *Id.* Corporal Ducker responded by forcing Runnells to the ground and restraining him.

[6] The State charged Runnells with two Class A misdemeanors: criminal trespass and resisting law enforcement. After a bench trial, Runnells was convicted on both counts and sentenced to six months imprisonment, suspended to probation, to be served consecutive to his sentence in an unrelated felony case. Runnells appeals his convictions, and the State cross-appeals his sentence.

Discussion and Decision

I. Runnells' Appeal

[7] Runnells challenges the sufficiency of the evidence to support his conviction for resisting law enforcement. When reviewing the sufficiency of the evidence, we do not reweigh evidence or judge witness credibility. *Walker v. State*, 998 N.E.2d 724, 726 (Ind. 2013). We view all evidence and reasonable inferences drawn therefrom in a light most favorable to the conviction and will affirm if there is substantial evidence of probative value from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

[8] To convict Runnells of Class A misdemeanor resisting law enforcement, the State had to prove that he: (1) knowingly or intentionally (2) forcibly (3) resisted, obstructed, or interfered with (4) a law enforcement officer, (5) while the officer was lawfully engaged in the execution of the officer's duties. Ind. Code § 35-44.1-3-1(a)(1); *see Spangler v. State,* 607 N.E.2d 720, 722-23 (Ind. 1993) (recognizing force as an essential element of the crime). Runnells argues that the State failed to prove his resistance was forcible.

[9] "[A person] 'forcibly resists' law enforcement when strong, powerful, violent means are used to evade a law enforcement official's rightful exercise of [their] duties." *Walker*, 998 N.E.2d at 727-28 (quoting *Spangler*, 607 N.E.2d at 723). "The element may be satisfied with even a modest exertion of strength, power, or violence," *id.* at 727, but "something more than mere action" is required. *Spangler*, 607 N.E.2d at 723. Forcible resistance also includes "the active *threat*

of such strength, power, or violence when that threat impedes the officer's ability to lawfully execute [their] duties." *Walker*, 998 N.E.2d at 727.

[10] In this case, Corporal Ducker's testimony was the only evidence presented on the issue of Runnells' resistance. Corporal Ducker testified:

> As soon as I attempted to place handcuffs on Mr. Runnells, he began to pull away or step away from me. I was able to grab his arm, and he began to pull away again from me. At that point, I grabbed him in a bear hug type manner, guided him to the ground, and was able to get him placed in handcuffs . . . .

Tr. Vol. II, p. 33. Nothing in this testimony suggests any "strength, power, or violence" in Runnells' actions or otherwise proves beyond a reasonable doubt that Runnells acted forcibly. *See Walker*, 998 N.E.2d at 727 ("[N]ot every . . . [active] response to a police officer constitutes the offense of resisting law enforcement, even when that response compels the officer to use force.").

[11] The State claims our decision in *Johnson v. State*, 833 N.E.2d 516 (Ind. Ct. App. 2005), warrants a different conclusion. In *Johnson*, this Court found sufficient evidence of forcible resistance where a person "turned away and pushed away [from an officer] with his shoulders while cursing and yelling," then "stiffened up" while being placed in a police transport vehicle. 833 N.E.2d at 517. We find more instructive our Supreme Court's decision in *K.W. v. State*, 984 N.E.2d 610 (Ind. 2013). In *K.W.*, the Court found insufficient evidence of forcible resistance where a person "began to resist and pull away" or "turned, [and]

pulled away" when an officer grabbed the person's wrist for handcuffing. *Id.* at 612-13.

[12] In *K.W.*, our Supreme Court also cited with approval our decisions in *A.C. v. State*, 929 N.E.2d 907, 908 (Ind. Ct. App. 2010) (finding insufficient evidence of forcible resistance where person "leaned" and "pulled away" from officer's grasp), and *Ajabu v. State*, 704 N.E.2d 494, 495 (Ind. Ct. App. 1998) (finding insufficient evidence of forcible resistance where person "twisted and turned a little" in response to officer's grasp). *K.W.*, 984 N.E.2d at 613. More recently, this Court relied on *K.W.* in finding insufficient evidence of forcible resistance where a person "kept tensing up and pulling away" when an officer tried to handcuff her. *Brooks v. State*, 113 N.E.3d 782, 785 (Ind. Ct. App. 2018). Each of these cases supports our conclusion that Runnells did not forcibly resist law enforcement by pulling away from Corporal Ducker's grasp.[1]

[13] The State also points to *Graham v. State*, 903 N.E.2d 963 (Ind. 2009), in which our Supreme Court opined that "even stiffening of one's arms when an officer grabs hold to position them for cuffing would suffice" as forcible resistance. *Id.*

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[1] Since *Spangler*, "appellate courts have attempted to place [resisting law enforcement cases] along a spectrum of force, though often with the facts varying only by slight degrees." *Walker*, 998 N.E.2d at 727. *Compare Brooks*, 113 N.E.3d at 785, *with Jordan v. State*, 37 N.E.3d 525, 535 (Ind. Ct. App. 2015) (finding sufficient evidence of forcible resistance where a person "yanked," "jerked," pulled," "twisted," and "turned" away from officer's grasp). "A side-effect of this approach can be a degree of unpredictability in outcome, for both the defendant and the State." *Walker*, 998 N.E.2d at 727-28; *accord Tyson v. State*, 149 N.E.3d 1186, 1188 (Ind. 2020) (Rush, J., dissenting from denial of transfer) ("Currently, we have a meager patchwork of precedent that has not explicitly set forth what is required to prove 'force' when the offense is based on a threat"); *Macy v. State*, 9 N.E.3d 249, 252 (Ind. Ct. App. 2014) ("[T]he line between what is and is not forcible resistance is blurry, to say the least.").

at 966 (finding insufficient evidence of forcible resistance where person refused to present arms for handcuffing). But the "stiffening" statement in *Graham*: (1) was not necessary to the Court's decision; (2) is difficult to square with the Court's subsequent holding in *K.W.*; and (3) appears at odds with other statements made by the Court over the years. *E.g.*, *Spangler*, 607 N.E.2d at 724 ("[T]he legislature intended the term 'forcible' to connote some form of violent action toward another"); *Snow v. State*, 77 N.E.3d 173, 177-78 (Ind. 2017) ("[A]ggression is part of [resisting law enforcement]"). For these reasons, we do not find the "stiffening" statement to be a guiding principle in this case.

[14] Finally, the State argues that Runnells' resistance was forcible because "[he] was in possession of a sawed-off shotgun" and, thus, actively threatened Corporal Ducker with strength, power, or violence. Appellee's Br. pp. 11-12. This argument might have carried the day if Runnells actually possessed a firearm at the time of the incident. *See Pogue v. State*, 937 N.E.2d 1253, 1258-59 (Ind Ct. App. 2010) (finding sufficient evidence of forcible resistance where person displayed box cutter and refused to drop it), *trans. denied.* But our review of the record only reveals evidence that Runnells possessed a sawed-off shotgun during a prior encounter with Corporate Ducker. *See* Tr. Vol. II, p. 32; App. Vol. II, p. 23. The State's argument is therefore without merit.

[15] Finding no evidence that Runnells forcibly resisted Corporal Ducker, we reverse Runnells' conviction for Class A misdemeanor resisting law enforcement.

II. State's Cross-Appeal

[16] In its appellee's brief, the State argues that this case should be remanded for resentencing because the trial court only sentenced Runnells for one of his two misdemeanor convictions. Runnells did not file a reply brief or otherwise respond to the State's argument. As a result, we need only analyze it for prima facie error—that is, error "at first sight, on first appearance, or on the face of it." *Buchanan v. State*, 956 N.E.2d 124, 127 (Ind. Ct. App. 2011).

[17] This Court has recognized that "the Indiana Code requires a discrete sentence for each offense." *Aguilar v. State*, 162 N.E.3d 537, 542 (Ind. Ct. App. 2020), *reh'g denied*, *trans. denied* (citing both Ind. Code § 35-50-1-1 ("The court shall fix the penalty of and sentence a person convicted of an offense.") and *Serino v. State*, 798 N.E.2d 852, 856 (Ind. 2003) (referring to "[t]he statutory process by which trial judges fashion discrete sentences")). "[I]t is not possible to receive a single 'sentence' across counts." *Id.*

[18] Runnells was convicted of two offenses—one count of Class A misdemeanor criminal trespass and one count of Class A misdemeanor resisting law enforcement. But on the face of the record, the trial court issued only one sentence. *See* Tr. Vol. II, p. 54 ("[U]nder the misdemeanor case, I'm going to sentence you to six months suspended . . . .); *see also* App. Vol. II, pp. 29-30 ("Under cause 67C01-2012-CM-1075, Court now sentences Defendant to six (6) months at the Putnam County Jail, all suspended . . . ."). Thus, it appears

the trial court either failed to issue a sentence for one of Runnells' convictions or erroneously issued a single sentence for both.

[19] For simplicity, we assume the trial court failed to issue a sentence as to Runnells' unchallenged conviction for Class A misdemeanor criminal trespass. We therefore remand for resentencing on that count.

[20] Reversed in part and remanded in part.

Najam, J., and Vaidik, J., concur.