MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Nathaniel L. Baston,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

July 23, 2024

Court of Appeals Case No.
24A-CR-432

Appeal from the Wabash Circuit Court

The Honorable Robert R. McCallen III, Judge

Trial Court Cause No.
85C01-2306-F6-672

Memorandum Decision by Judge Mathias
Chief Judge Altice and Judge Bailey concur.

Mathias, Judge.

[1] Nathaniel Baston appeals his convictions for Level 6 felony battery against a public safety officer and Class A misdemeanor resisting law enforcement. He also appeals his adjudication as a habitual offender. Baston presents two issues for our review:

> 1. Whether the trial court erred when it admitted evidence at trial.
>
> 2. Whether his sentence is inappropriate in light of the nature of the offenses and his character.

[2] We affirm.

Facts and Procedural History

[3] During the early morning hours of June 19, 2023, Baston was driving his pickup truck on County Road 800 West in Wabash County when it ran out of gas. He left the truck sitting in the travel portion of the road and began walking north. A short time later, Wabash County Deputy Sheriff Edgel Hicks received a dispatch regarding a white man walking northbound on 800 West "between 500 and 550 North" and an abandoned pickup truck in the road south of the man's location. Tr. p. 115. A few minutes later, Deputy Hicks found Baston, a white man, walking northbound at that location. Deputy Hicks saw no other pedestrians between County Road 500 North and 550 North.

[4] Deputy Hicks, wearing his uniform and in a marked vehicle, activated his lights, parked his vehicle, and approached Baston. Deputy Hicks said to Baston,

"hey, we got a report of a car . . . broke down the road." *Id.* at 118. Baston replied, "sure is." *Id.* Baston then crossed the road from the west side to the east side and did not stop to talk to Deputy Hicks. Deputy Hicks "got in front" of Baston and asked him for identification. *Id.* Baston stated that he did not have his license, and he asked, "am I in trouble?" *Id.* Deputy Hicks said "no." *Id.* Baston then "got in [Deputy Hicks's] face[.]" *Id.* Baston said, "knock this shit off." *Id.* at 119.

[5] Deputy Hicks stood in front of Baston, put his hands on Baston's biceps, and told him to "calm down." *Id.* at 120. Baston told Deputy Hicks "not to touch him." *Id.* Baston became "more aggressive" and told Deputy Hicks to "tow the mother ****er" (referring to the pickup truck). *Id.* at 121. Deputy Hicks repeatedly asked Baston to identify himself, but he refused. Finally, Deputy Hicks told Baston that he was being "detained." *Id.* at 122. Baston responded, "no, I'm not[.]" *Id.* Deputy Hicks then grabbed Baston, who responded by "pushing" and "trying to jerk away" from him. *Id.* Deputy Hicks knocked Baston to the ground, and Baston started kicking Deputy Hicks. Deputy Hicks was finally able to take him "into custody." *Id.*

[6] The State charged Baston with Level 6 felony battery against a public safety officer and Class A misdemeanor resisting law enforcement, and the State also alleged that Baston was a habitual offender. Prior to trial, Baston filed a motion to suppress the evidence alleging that his detention violated the Fourth Amendment to the United States Constitution. The trial court denied that motion. A jury found Baston guilty as charged and adjudicated him to be a

habitual offender. The trial court entered judgment of conviction accordingly and sentenced him to an aggregate term of eight and one-half years executed. This appeal ensued.

Discussion and Decision

Issue One: Admission of Evidence

[7] Baston contends that the trial court erred under the Fourth Amendment when it admitted the evidence supporting the charges against him.[1] Baston maintains that Deputy Hicks lacked reasonable suspicion that Baston had committed an infraction or a crime when he detained him. This argument presents a question of law that we review de novo. *See Toppo v. State*, 171 N.E.3d 153, 155 (Ind. Ct. App. 2021), *trans. denied*. "'[A]s a general matter[,] determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal,' while 'findings of historical fact' underlying those legal determinations are reviewed 'only for clear error.'" *Id.* (quoting *Ornelas v. United States*, 517 U.S. 690, 699 (1996)).

[8] The Fourth Amendment protects citizens from search or seizure absent a warrant supported by probable cause. *See Hutson v. State*, 215 N.E.3d 357, 361 (Ind. Ct. App. 2023), *trans. denied*. One exception to the warrant requirement is the *Terry* stop. *Id.* This exception "permits a police officer to stop and detain a

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[1] Baston also argues that the evidence was inadmissible under Article 1, Section 11 of the Indiana Constitution. But he did not make that argument to the trial court. Thus, he has failed to preserve that issue for our review.

person for investigative purposes if the officer has a reasonable suspicion, supported by articulable facts, that criminal activity 'may be afoot[,]' even if the officer lacks probable cause." *Id.* (quoting *Terry v. Ohio*, 392 U.S. 1, 30 (1968)).

[9] Here, the State presented evidence that, at the time Deputy Hicks confronted him, Baston had violated Indiana Code section 9-21-16-1(b), which provides that a person "may not stop, park, or leave standing an attended or unattended vehicle upon the paved or main traveled part of a highway outside of a business or residence district, if it is practicable to stop, park, or leave the vehicle off the highway." A violation of that statute is a Class C infraction. I.C. § 9-21-16-9. Deputy Hicks testified that, because Baston's truck was stopped on a sloped part of the county road, Baston could have pushed it off the roadway before abandoning it. Thus, when he asked Baston for his identification, Deputy Hicks had a reasonable belief that Baston had committed an infraction.

[10] Baston's argument on appeal is merely a request that we reweigh the evidence, which we will not do. The State presented evidence that, when Deputy Hicks first asked Baston about the abandoned truck, Baston admitted that it was his. At that point, Deputy Hicks had reasonable suspicion sufficient to briefly detain Baston based on the infraction. *See Terry*, 392 U.S. at 30. The trial court did not err when it admitted evidence of the physical scuffle that ensued to support Baston's convictions.

Issue Two: Sentence

[11] Baston argues that his sentence is inappropriate in light of the nature of the offenses and his character. The trial court imposed the maximum sentences of two and one-half years for Baston's conviction of Level 6 felony battery against a public safety officer and one year for his Class A misdemeanor resisting law enforcement conviction. *See* I.C. §§ 35-50-2-7, 35-50-3-2. The court ordered those sentences to run concurrently. And the court enhanced Baston's two-and-one-half-year sentence by six years for his habitual offender adjudication, for a total aggregate term of eight and one-half years executed.

[12] Under Indiana Appellate Rule 7(B), we may modify a sentence that we find is "inappropriate in light of the nature of the offense and the character of the offender." Making this determination "turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). Sentence modification under Rule 7(B), however, is reserved for "a rare and exceptional case." *Livingston v. State*, 113 N.E.3d 611, 612 (Ind. 2018) (per curiam).

[13] When conducting this review, we generally defer to the sentence imposed by the trial court. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Our role is to "leaven the outliers," not to achieve what may be perceived as the "correct" result. *Id.* Thus, deference to the trial court's sentence will prevail unless the defendant persuades us the sentence is inappropriate by producing compelling evidence portraying in a positive light the nature of the offense—such as

showing restraint or a lack of brutality—and the defendant's character—such as showing substantial virtuous traits or persistent examples of positive attributes. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018); *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[14] Baston argues that the nature of the offenses does not support the maximum sentence because Deputy Hicks sustained only a minor injury, a small scrape on his hand, and a "good kick." Appellant's Br. at 23. And Baston maintains that he mostly resisted by "walking away" from Deputy Hicks. *Id.*

[15] Baston's offenses are not particularly heinous, but that alone does not mean that his sentence warrants revision. *See* App. R. 7(B). Regarding his character, Baston argues that he has the "potential to respond well to community supervision," and he maintains that his criminal history is only "moderate." *Id.* at 23-24. But Baston's optimism is undermined by his history of violating the terms of his probation four times, as well as numerous allegations of violations of community corrections. Moreover, we disagree with Baston's characterization of his criminal history. At age thirty-nine, Baston had accumulated three juvenile adjudications, seven misdemeanor convictions, and seven prior felony convictions, including battery convictions. Moreover, Baston has not presented compelling evidence showing substantial virtuous traits or persistent examples of positive attributes to show a good character. *See Stephenson*, 29 N.E.3d at 122.

[16] For all these reasons, we affirm Baston's convictions and sentence.

[17] Affirmed.

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

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