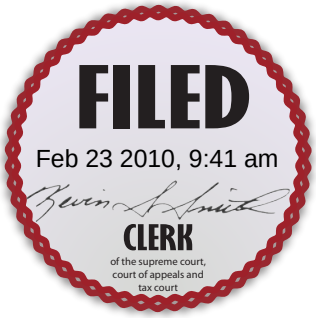

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IN THE
COURT OF APPEALS OF INDIANA

DRAMEKA SWAIN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0908-CR-387
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John Surbeck, Judge
Cause No. 02D04-0901-FD-31

February 23, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Drameka Swain ("Swain") was convicted in Allen Superior Court of Class D felony resisting law enforcement and Class D felony assisting a criminal. The trial court sentenced her to an aggregate term of two years. Swain appeals and argues that the evidence was insufficient to support her convictions.

We affirm Swain's conviction for resisting arrest and reverse Swain's conviction for assisting a criminal.

Facts and Procedural History

Early in the morning on January 2, 2009, Fort Wayne Police Officer Jason Anthony ("Officer Anthony") was patrolling in a fully marked patrol car while dressed in his police uniform, when he was dispatched to an apartment complex after a report of a suspicious person. Officer Anthony was notified that the female caller had told the dispatcher that a man named Cameron Kizer ("Kizer") was attempting to force his way into her apartment. While on the way to the apartment, Officer Anthony obtained a photo of Kizer.

When he arrived at the apartment, Officer Anthony saw two men, dressed in black, at the patio door. The men fled. Officer Anthony exited his patrol car and pursued the men, ordering them to stop and identifying himself as a police officer. However, the men did not stop and Officer Anthony pursued them across two parking lots toward a pond. At the pond, the men split up and ran in different directions. Officer Anthony pursued the second man, Rodney Jones ("Jones") and notified arriving units that Jones was running toward the clubhouse, directing them toward that location.

Another officer, Officer Tim Hughes ("Officer Hughes"), arrived in his police uniform driving a marked patrol car while Officer Anthony was chasing Jones. Officer Hughes joined the pursuit, shouting at Jones to stop and also identifying himself as a police officer. Jones continued to flee. During the pursuit, both officers saw a Nissan Altima, driven by Swain, stop on the street by the clubhouse of the apartment complex. Jones fled towards the Altima, yelling "hold on, hold on" to Swain. Tr. p. 7. Swain yelled back, "Hurry up. Come on. They're coming." Tr. pp. 7, 8. Jones reached the car and jumped in the rear driver's side door. Both officers were approximately two feet behind Jones. They yelled at Swain that they were police and that she should stop the car. Swain looked directly at the officers and quickly drove away.

At that moment, two police vehicles with lights flashing arrived. They were notified by Officers Hughes and Anthony that the fugitive was in a silver Altima. The police vehicles pursued the Altima which stopped within ten or fifteen seconds. Jones was arrested after a brief struggle and placed in Officer Hughes's police vehicle. Officer Troyer heard Swain speaking on her cell phone to someone named Cameron. She told Cameron that she was sorry, that she thought he was coming, that she stopped the car for him, but Rodney jumped in. Tr. p. 22.

The State charged Swain with Class D felony resisting law enforcement and Class D felony assisting a criminal. Swain waived the jury trial. Following the bench trial, Swain was found guilty as charged. The trial court sentenced Swain to two years on each count to be served concurrently. The trial court suspended the sentences and ordered Swain to serve one-year home detention. Swain now appeals.

Discussion and Decision

Swain argues that the evidence is insufficient to support her convictions for Class D felony resisting law enforcement and Class D felony assisting a criminal. In a trial before the bench, the court is responsible for weighing the evidence and judging the credibility of witnesses as the trier of fact, and we will not interfere with this function on appeal. O'Neal v. State, 716 N.E.2d 82, 87 (Ind. Ct. App. 1999). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id. If inferences may be reasonably drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt then circumstantial evidence will be sufficient. Id.

A. Resisting Law Enforcement

Under Indiana code section 35-44-3-3(a) (2004), "[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, a Class A misdemeanor, except as provided in subsection (b)." Under Indiana code section 35-44-3-3(b) (2004), "[t]he offense under subsection (a) is a [] Class D felony if [] the offense is described in subsection (a)(3) and the person uses a vehicle to commit the offense[.]"

Swain contends that her testimony establishes that she did not knowingly or intentionally resist law enforcement because she inadvertently drove away with a man who she subsequently determined to be pursued by police. Also, she testified that she did not see the police before picking up Jones. Swain's claims are merely a request to reweigh the evidence, which we will not do. The evidence is sufficient to support Swain's conviction for Class D felony resisting law enforcement.

B. Assisting a Criminal

Swain also challenges her conviction for the Class D felony offense of assisting a criminal. Under Indiana code section 35-44-3-2 (2004), "[a] person not standing in the relation of parent, child, or spouse to another person who has committed a crime or is a fugitive from justice who, with intent to hinder the apprehension or punishment of the other person, harbors, conceals, or otherwise assists the person commits assisting a criminal, a Class A misdemeanor. However, the offense is [] a Class D felony if the person assisted has committed a Class B, Class C, or Class D felony[.]"

Swain contends that the State failed to prove that she was not the parent, child, or spouse of Jones. Swain relies on Jaunese v. State, 701 N.E.2d 1282 (Ind. Ct. App. 1998), where we reversed a conviction for Class C felony assisting a criminal by providing false testimony because the State had failed to provide facts from which it could be deduced that the defendant's relationship with the criminal assisted was not one of a parent, child, or spouse. In Jaunese, although the State presented evidence that the defendant had a girlfriend, we determined that "[w]ithout any other evidence to the contrary, the existence of a significant other is too remote to prove a person is not married." Id. at 1284.

We are constrained to agree. Swain testified that Cameron Kizer was her boyfriend, that she had known him for seven years, and that she had two children, four-year-old Cameron and three-year-old Camari, satisfying only two of the three identity elements of Indiana Code section 35-44-3-2. From Swain's testimony and presence in the courtroom, the trial court could easily determine that Swain was not Jones's parent or child. But no evidence was admitted at trial proving that Swain was not Jones's wife at the time of the incident. We must therefore conclude that the evidence presented is insufficient to support Swain's conviction for Class D felony assisting a criminal.

Conclusion

The evidence is sufficient to support Swain's conviction for Class D felony resisting law enforcement. However, the evidence presented at trial is insufficient to support Swain's conviction for Class D felony assisting a criminal. Swain's sentences were ordered served concurrently, so we see no reason to modify her sentence as a result of this opinion.

Affirmed in part, reversed in part and remanded for the limited purpose of correcting the abstract of judgment to remove Swain's conviction for Class D felony assisting a criminal.

BARNES, J., and BROWN, J., concur.