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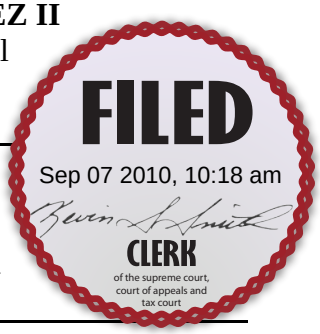

IN THE COURT OF APPEALS OF INDIANA

PHILLIP J. CAMP,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 29A02-1002-CR-210
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Gail Bardach, Judge
Cause No. 29D06-0902-CM-607

September 7, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Appellant-defendant Phillip J. Camp appeals his conviction for Resisting Law Enforcement, a Class A misdemeanor, following a bench trial. Camp presents a single issue for review, namely, whether the evidence supports his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

On February 9, 2009, the Cicero Chief of Police, Dave Hildebrand, was in his home in Arcadia when he saw headlights in his driveway. Chief Hildebrand observed a truck that appeared to be stuck in the snow.

Chief Hildebrand drove his police vehicle out of his garage, pulled it behind the truck, and activated his lights. Chief Hildebrand used his radio to request an Arcadia police officer and then exited his vehicle.

The driver of the truck, who was later identified as Camp, exited his vehicle. Chief Hildebrand asked Camp what he was doing and Camp explained that he was stuck in the snow. Chief Hildebrand requested that Camp accompany him to his police vehicle, but Camp refused. When Chief Hildebrand asked Camp a second time, Camp told him to "shut [his] mouth." Transcript at 15. At that point, Camp started to walk towards Chief Hildebrand who "got him by the wrist" and walked him back to his police vehicle as Officer John Woods of the Arcadia Police Department arrived at the scene. Id. During Chief Hildebrand's contact with Camp, he observed that Camp was unsteady on his feet,

showed signs of slurred speech, and had an odor "associated with an alcoholic beverage on his breath." Id. at 16.

Similarly, Officer Woods noticed that Camp had the "odor of an alcoholic beverage coming from his breath," slurred speech, and unsteady balance. Id. at 36. Camp refused all field sobriety tests that were offered to him by Officer Woods and was "very abusive" during his exchange with Officer Woods. Id.

After Camp refused to submit to any field sobriety tests, Officer Woods informed him of Indiana's Implied Consent Law[1] and offered him a chemical test, which Camp also refused. Officer Woods sought and was granted a warrant to obtain a sample of Camp's blood.

Officer Woods transported Camp to Riverview Hospital. During the commute, Camp continued to be belligerent and when they arrived, Officer Woods enlisted the assistance of Deputy Matt Deckard[2] of Riverview's Security Division.[3] While waiting for a phlebotomist to withdraw a sample of Camp's blood, Officer Woods and Deputy Deckard tried to keep Camp calm, but he continued to be belligerent. Suddenly, Camp "charged at Deputy Deckard and Deputy Deckard had [to take] Mr. Camp down to the

[1] Ind. Code § 9-30-6-1 (providing that "[a] person who operates a vehicle impliedly consents to submit to the chemical test provisions of this chapter as a condition of operating a vehicle in Indiana").

[2] The Parties refer to the deputy's last name as Deckard; however, the probable cause affidavit states that his last name is Decker. We will refer to him as Deckard.

[3] Although the record is not entirely clear, it appears that Riverview's Security Division is staffed by the Hamilton County Sheriff's Department.

ground." Id. at 44. Eventually, the officers were able to calm Camp down and a blood sample was taken.

On February 5, 2009, the State charged Camp with operating a vehicle while intoxicated, endangering a person, a Class A misdemeanor, and resisting law enforcement, a Class A misdemeanor. On March 19, 2009, the State amended its charging information to include an additional count of operating a vehicle with a blood alcohol concentration equivalent of .15 or more.

Camp's bench trial commenced on January 13, 2010, and at its conclusion, the State moved to dismiss the charge of operating a vehicle with a blood alcohol concentration equivalent of .15 or more, which was granted. The trial court found Camp guilty of Class C misdemeanor operating a vehicle while intoxicated as a lesser included offense of Class A misdemeanor operating a vehicle while intoxicated, endangering a person. Additionally, the trial court found Camp guilty of resisting law enforcement, a Class A misdemeanor. The trial court sentenced Camp to an executed term of sixty days in the Hamilton County Jail for operating a vehicle while intoxicated, to be served concurrent with an executed term of 180 days for resisting law enforcement. Camp now appeals his conviction for resisting law enforcement.

DISCUSSION AND DECISION

Camp argues that the evidence is not sufficient to support his conviction for resisting law enforcement. When reviewing a claim challenging the sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones

v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude that the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

To prove the offense of resisting law enforcement, the State was required to show beyond a reasonable doubt that Camp knowingly or intentionally forcibly resisted, obstructed, or interfered with Officer John Woods or a person assisting the officer while Officer Woods was lawfully engaged in the execution of the officer's duties. See Ind. Code § 35-44-3-3-(a)(1). Here, Camp points out that at trial, "Officer Woods testified that Camp did not resist him." Appellant's Br. p. 13.

As stated above, because Camp continued to be belligerent during the commute to Riverview Hospital, Officer Woods enlisted the assistance of Deputy Deckard. While they waited for Camp's blood to be drawn, Camp suddenly "charged at Deputy Deckard and Deputy Deckard had [to take] Mr. Camp down to the ground." Transcript at 44. Under these circumstances, the trial court could reasonably conclude that Camp forcibly resisted Deputy Deckard, who was assisting Officer Woods while Officer Woods was lawfully engaged in the execution of his duties.

Notwithstanding this conclusion, Camp avers that because the State's information alleged that he resisted Officer Woods, with no mention of Deputy Deckard, the State was required to prove beyond a reasonable doubt that he forcibly resisted Officer Woods.

Camp maintains that the State failed to do so and that, consequently, his conviction must be reversed. Essentially, Camp argues that there was a variance between the charging information and the proof presented at trial.

An information "'must be sufficiently specific to apprise the defendant of the crime for which he is charged and to enable him to prepare a defense.'" Bonner v. State, 789 N.E.2d 491, 493 (Ind. Ct. App. 2003) (quoting Jones v. State, 467 N.E.2d 1236, 1241 (Ind. Ct. App. 1984)). Moreover, "[i]t is well established that 'facts which may be omitted from an information without affecting the sufficiency of the charge against the defendant are mere surplusage and do not need to be proved.'" Parahams v. State, 908 N.E.2d 689, 691 (Ind. Ct. App. 2009) (quoting Bonner, 789 N.E.2d at 493)).

To determine whether a variance between the charging information and the evidence produced at trial is fatal, we must consider whether the defendant was misled by the variance in the preparation and maintenance of his defense and was harmed or prejudiced. Id. Additionally, we must ascertain whether the defendant will be "protected in the future criminal proceeding covering the same event, facts, and evidence against double jeopardy[.]" Mitchem v. State, 685 N.E.2d 671, 677 (Ind. 1997).

In support of his argument, Camp relies on Whaley v. State, 843 N.E.2d 1 (Ind. Ct. App. 2006), Bonner, and O'Connor v. State, 590 N.E.2d 145 (Ind. Ct. App. 1992). However, we think that the instant case is most analogous to Parahams.

In Parahams, the defendant fled on foot from five police officers and was caught and charged with resisting law enforcement. Id. at 691. The charging information named

one officer as the officer who had ordered the defendant to stop, but the evidence at trial revealed that it was another officer who had told the defendant to stop running. Id. at 693. On appeal, the defendant argued that the State presented insufficient evidence to support his conviction based on the variance between the charging information and the evidence produced at trial. Id. at 691.

The Parahams court distinguished Whaley and Bonner, pointing out that the defendants in both of those cases had been charged with multiple counts of resisting law enforcement and that, consequently, the State's failure to correctly identify the officer in the charging information "arguably misled the defendant in the preparation and maintenance of his defense." Id. at 693 (footnote omitted). The Parahams court emphasized that the defendant was charged with only one count of resisting law enforcement, that he did not argue that the variance misled him in the preparation of his defense, and that the probable cause affidavit listed the five officers who were present at the scene. Id.

Similarly, in the instant case, Camp was charged with one count of resisting law enforcement, and the probable cause affidavit indicates that Deputy Deckard was present at the scene. And while Camp states that he was misled in preparing his defense, in light of the evidence discussed above, we cannot conclude that he was prejudiced. Consequently, this argument must fail, and we affirm the judgment of the trial court.

The judgment of the trial court is affirmed.

BAKER, C.J., and MATHIAS, J., concur.