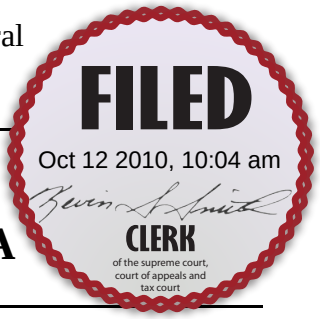
ATTORNEY FOR APPELLANT:

BARBARA J. SIMMONS
Oldenburg, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JOBY D. JERRELLS
Deputy Attorney General
Indianapolis, Indiana



IN THE COURT OF APPEALS OF INDIANA

MICHELLE WOODS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-1002-CR-119
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Israel N. Cruz, Commissioner
Cause No. 49F10-0910-CM-86572

October 12, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Michelle Woods appeals her convictions for Battery on a Law Enforcement Officer,[1] a class A misdemeanor; Resisting Law Enforcement,[2] a class A misdemeanor; and Disorderly Conduct,[3] a class B misdemeanor. Specifically, Woods argues that she was denied her right of confrontation under the Sixth Amendment to the United States Constitution and that the State presented insufficient evidence to support her convictions. Rejecting Woods's constitutional claim and finding sufficient evidence, we affirm the judgment of the trial court.

FACTS

On October 7, 2009, Officer Adrian Aurs of the Indianapolis Metropolitan Police Department received a dispatch about a disturbance on the west side of Indianapolis. When Officer Aurs arrived at the scene, he found Woods standing in the driveway of a residence yelling at a man who was on the front porch to the point "where it was disturbing the neighborhood." Tr. p. 6.

When Officer Aurs asked Woods to identify herself, she refused, and Officer Aurs "could smell the odor of an alcoholic beverage on her person." Id. at 7. Woods continued to yell despite numerous requests from Officer Aurs to stop. Officer Aurs tried to talk to Woods, but she refused to cooperate and identify herself.

[1] Ind. Code § 35-42-2-1(a)(1)(B).

[2] Ind. Code § 35-44-3-3.

[3] Ind. Code § 35-45-1-3.

Officer Aurs started to take Woods into custody and began to grab her right arm; however, Woods "jerked her arm away." Id. at 8. Woods began walking away from Officer Aurs, but he, along with Officer Christopher Anderson, caught up with her and began to handcuff her. During this process, Woods began kicking and "actually kicked Officer Anderson a couple of times in his lower leg." Id. at 9.

Once the officers were able to get the handcuffs on Woods, she still would not cooperate. Woods refused to sit on the sidewalk as instructed and kept jumping up and moving around. Eventually, Woods had to have her legs placed in shackles because she kept trying to kick.

On October 8, 2009, the State charged Woods with Count I, Battery on a Law Enforcement Officer, a class A misdemeanor; Count II, Battery on a Law Enforcement Officer, a class A misdemeanor; Count III, Resisting Law Enforcement, a class A misdemeanor; and Count IV, Disorderly Conduct, a class B misdemeanor. A bench trial was held on February 1, 2010, and at the close of the State's case-in-chief, Woods moved to dismiss Counts I and II. The trial court granted the motion on Count I but denied it on Count II.[4] At the conclusion of Woods's bench trial, the trial court found her guilty on all remaining charges.

The trial court held a sentencing hearing the same day and sentenced Woods to 365 days on Count II, with four days executed and 361 days suspended to probation. Likewise, on Count III, the trial court sentenced Woods to 365 days with four days

[4] Count I pertained to Officer Aurs and Count II pertained to Officer Anderson.

executed and 361 days suspended to probation, and on Count IV, the trial court sentenced Woods to 180 days with four days executed and 176 days suspended to probation. The trial court ordered the terms to run concurrently, for a total term of 365 days with four days executed and 361 days suspended to probation. Woods now appeals.

DISCUSSION AND DECISION

I. Right of Confrontation

Woods argues that her conviction for battery on a law enforcement officer must be reversed because she was denied her right to confront witnesses under the Sixth Amendment to the United States Constitution. Specifically, Woods points out that she was unable to confront and cross-examine Officer Anderson, the officer she was convicted of battering, because he did not testify at her trial.

The Sixth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, requires that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." Accordingly, a witness's testimony against a defendant is inadmissible unless the witness appears at trial or the defendant has had a prior opportunity for cross-examination if the witness is unavailable to testify at trial. Crawford v. Washington, 541 U.S. 36, 53-54 (2004).

Here, as Woods readily admits, Officer Anderson was neither called as a witness at her trial nor were his statements offered in lieu of his in-court testimony. Instead, the State offered the testimony of Officer Aurs, whom Woods, through counsel, confronted

and cross-examined. Consequently, Woods was not denied her right to confront and cross-examine witnesses under the Confrontation Clause, and this constitutional claim fails.

II. Insufficient Evidence

A. Standard of Review

Woods argues that there was insufficient evidence to support her convictions. When reviewing a claim of insufficient evidence, we will neither reweigh the evidence nor judge the credibility of witnesses. Turner v. State, 650 N.E.2d 705, 707 (Ind. Ct. App. 1995). Rather, we look only to the probative evidence supporting the judgment and the reasonable inferences drawn therefrom to determine whether a reasonable trier of fact could conclude that 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.

B. Battery on a Law Enforcement Officer

Woods maintains that the State presented insufficient evidence to support her conviction for battery on a law enforcement officer. In particular, Woods contends that without Officer Anderson's testimony, there was no evidence that she knowingly or intentionally kicked him or that she did so in a manner that was rude, insolent, or angry.

To convict Woods of battery on a law enforcement officer, the State was required to prove that she knowingly touched a law enforcement officer in a rude, insolent, or angry manner while the officer was engaged in the execution of his official duty. Ind.

Code § 35-42-2-1(a)(1)(A). Indiana Code section 35-41-2-2(b) provides that a person engages in conduct "knowingly" if, when she engages in the conduct, she is aware of a high probability that she is doing so. Additionally, "[b]ecause knowledge is the mental state of the actor, it may be proved by circumstantial evidence and inferred from the circumstances and facts of each case." Wilson v. State, 835 N.E.2d 1044, 1049 (Ind. Ct. App. 2005).

In the instant case, Officer Aurs testified that he saw Woods kick Officer Anderson in the leg multiple times as the two officers attempted to handcuff Woods and that she continued to kick to the point that she had to be placed in leg shackles. In addition, Officer Aurs stated that Woods was "angry, and very belligerent." Tr. p. 13. Under these circumstances, it is reasonable to infer that by continuing to kick, Woods knew that there was a high probability that she would strike Officer Anderson. Similarly, the act of kicking to the point of needing to be placed in leg shackles is, in itself, a rude and insolent action. In short, the State presented sufficient that Woods committed battery on a law enforcement officer.

C. Resisting Law Enforcement

Woods contends that the evidence was insufficient to support her conviction for resisting law enforcement. Specifically, Woods maintains that she "used no strength, power or violence towards the police officers nor made a threatening gesture or movement in their direction," and that, consequently, there is no evidence that she forcibly resisted the police officers. Appellant's Br. p. 14.

To convict Woods of this offense, the State was required to prove beyond a reasonable doubt that Woods knowingly or intentionally forcibly resisted, obstructed, or interfered with a law enforcement officer while the officer was lawfully engaged in the execution of the officer's duties. Ind. Code § 35-44-3-3. Our Supreme Court has instructed that one "'forcibly resists' law enforcement when strong, powerful, violent means are used to evade a law enforcement official's rightly exercise of his or her duties." Spangler v. State, 607 N.E.2d 720 (Ind. 1993). Nevertheless, this Court recently recognized that "Indiana jurisprudence indicates that the amount of force required to convict a person of resisting law enforcement is not as great as one would expect under the language in Spangler." Lopez v. State, 926 N.E.2d 1090, 1092-93 (Ind. Ct. App. 2010) (recognizing that in Graham v. State, 903 N.E.2d 963, 965-66 (Ind. 2009), our Supreme Court simultaneously approved of the language Spangler and agreed that "modest" resistance could constitute "forcible resistance").

In the instant case, Officer Aurs testified that when he tried to handcuff Woods, she "jerked her arm away" and "tried to walk away from [the officers]." Tr. p. 8. Officer Aurs stated that "during the process of handcuffing [Woods] she started kicking. She actually kicked Officer Anderson a couple of times in his lower leg." Id. at 9. Woods's actions were not mere refusals to cooperate with police as they tried to execute an arrest. See Graham, 903 N.E.2d at 965-66 (reversing conviction for resisting law enforcement where the defendant refused to police officers' requests that he present his arms for cuffing); Colvin v. State, 916 N.E.2d 306, 309 (Ind. Ct. App. 2009), trans. denied,

(reversing conviction where the evidence showed only that the defendant kept his hands in his pockets during the struggle to execute his arrest); Berberena v. State, 914 N.E.2d 780, 782 (Ind. Ct. App. 2009), trans. denied, (reversing conviction where officer's testimony was ambiguous and demonstrated only that he had to forcibly place the defendant's hands in the handcuffs). Indeed, as discussed above, Woods used force to resist the officers, and the evidence was sufficient to support her conviction for this offense.

D. Disorderly Conduct

Woods argues that there was insufficient evidence to support her conviction for disorderly conduct, maintaining that any noise she made was not unreasonable under the circumstances. To secure a conviction for disorderly conduct, the State had to prove that Woods recklessly, knowingly, or intentionally made unreasonable noise and continued to do so after being asked to stop. Ind. Code § 35-45-1-3(a)(2). Unreasonable noise is noise that is too loud under the circumstances. Whittington v. State, 669 N.E.2d 1363, 1367 (Ind. 1996).

At Woods's trial, Officer Aurs testified that when he arrived at the scene, Woods was yelling in the neighborhood and refused to stop yelling despite his numerous requests. Woods's actions interfered with Officer Aurs's investigation, inasmuch as he was unable to obtain statements from anyone at the scene or "see if we could resolve anything." Tr. p. 10. In light of these circumstances, we cannot say that there was insufficient evidence to convict Woods of disorderly conduct, and we affirm the

judgment of the trial court. See Johnson v. State, 719 N.E.2d 445, 448 (Ind. Ct. App. 1999) (concluding that "[b]ecause Johnson's loud manner of speaking disrupted a police investigation, the trial court's conclusion that Johnson made unreasonable noise is supported by the evidence").

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.