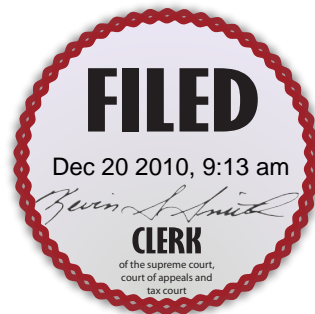


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MARKISHA HILL,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A04-1005-CR-297

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda E. Brown, Judge
Cause No. 49F10-0908-CM-073013

December 20, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

After a police officer made a warrantless entry into Markisha Hill's residence, Hill was charged with and convicted of Class A misdemeanor resisting law enforcement. The sole issue presented on appeal is whether the State presented sufficient evidence that the officer was lawfully engaged in the execution of his duties as a law enforcement officer when he made the warrantless entry. Specifically, Hill contends that the officer's warrantless entry violated her federal and state constitutional rights against unreasonable search or seizure. Concluding that exigent circumstances justified the entry under the Fourth Amendment of the United States Constitution and that the entry was reasonable under Article 1, Section 11 of the Indiana Constitution, we determine that the officer was lawfully engaged in the execution of his duties. The evidence is thus sufficient to sustain Hill's conviction for resisting law enforcement. We therefore affirm.

Facts and Procedural History

In August 2009, thirteen-year-old J.H. called 911 and reported that someone was trying to kill her younger brother. Officer Donald Neal of the Indianapolis Metropolitan Police Department was dispatched to 3953 North Kenwood Avenue in response to the call. He was in a marked police vehicle and wearing his police uniform. En route, Officer Neal received an additional message from the dispatcher stating that, due to the way J.H. sounded on the phone, "something may be terribly wrong" and it may be "an out-of-control situation." Tr. p. 15.

Once there, Officer Neal knocked on the front door and announced himself as a police officer. Hill answered the door. She was sweating profusely and smoking a

cigarette. Officer Neal, concerned for his safety, asked Hill to put out the cigarette and to step outside onto the front porch to speak with him about what was going on inside the home. Hill refused and attempted to shut the door. Officer Neal was concerned about the seriousness of the 911 call alleging that someone was trying to kill a child and aware, based on his training and experience, that Hill may be trying to divert the police from entering the home “due to a very terrible situation that has happened.” *Id.* at 20. Hill’s sweating also made Officer Neal suspect that something physical had occurred inside the home before his arrival. Because of these concerns, he pushed the door open and went inside.

Officer Neal attempted to detain Hill so that he could investigate. She jerked her arms away from him. She was uncooperative and did not answer any of his questions. When Officer Neal explained why he was at her residence, she stated, “I’m just spanking my kids, and . . . there’s nothing you can do about it.” *Id.* at 21-22. Hill denied doing anything wrong and “flare[d]” her arms around. *Id.* at 22. She was sweating so badly that she was able to slip away every time Officer Neal grabbed her arms. Hill swung her left arm toward Officer Neal’s face. Officer Neal blocked her and then put her into an arm hold and headed out the front door. Hill, screaming and yelling at Officer Neal, managed to break free. When Officer Neal attempted to grab her again, they both fell off the front porch. On the ground, Hill had her hands locked underneath her. Officer Neal told her multiple times to stop resisting and used knee-strikes to try to get her to unlock her hands. Two additional police officers arrived, and together, they were able to pull her hands out from underneath her and handcuff her.

The State charged Hill with Class A misdemeanor resisting law enforcement. Ind. Code § 35-44-3-3(a)(1). After a bench trial, at which Officer Neal and one of the other officers testified, the trial court found Hill guilty as charged.

Hill now appeals.

Discussion and Decision

Hill contends that the evidence is insufficient to support her conviction for resisting law enforcement. Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, we do not reweigh the evidence or judge the credibility of the witnesses. *Fought v. State*, 898 N.E.2d 447, 450 (Ind. Ct. App. 2008). We consider only the evidence most favorable to the judgment and the reasonable inferences drawn therefrom and affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* A conviction may be based upon circumstantial evidence alone. *Id.* Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

To convict Hill of resisting law enforcement as charged here, the State had to prove that she knowingly forcibly resisted, obstructed, or interfered with Officer Neal while he was lawfully engaged in the execution of his duties as a law enforcement officer. I.C. § 35-44-3-3(a)(1); Appellant's App. p. 19.

Hill claims that when Officer Neal entered her residence without a warrant, he violated her federal and state constitutional rights against unreasonable search and seizure

and was therefore not lawfully engaged in the execution of his duties as a law enforcement officer.

I. Federal Constitutional Claim

Hill argues that Officer Neal's warrantless entry violated the Fourth Amendment of the United States Constitution, which provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The protections of the Fourth Amendment have been extended to the states through the Fourteenth Amendment. *Taylor v. State*, 929 N.E.2d 912, 919 (Ind. Ct. App. 2010), *trans. denied*. The fundamental purpose of the Fourth Amendment is to protect the legitimate expectations of privacy that citizens possess in their persons, homes, and belongings. *Id.* A search or seizure may generally only be conducted pursuant to a lawful warrant. *Id.* Because warrantless searches are per se unreasonable, the State bears the burden of establishing that a warrantless search falls within one of the well-delineated exceptions to the warrant requirement. *Id.*

One such exception is where exigent circumstances ““make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.”” *Holder v. State*, 847 N.E.2d 930, 936-37 (Ind. 2006) (quoting *Mincey v. Arizona*, 437 U.S. 385, 394 (1978)). Threats to the lives and safety of others are among the exigencies that may properly excuse the warrant requirement. *Id.* at 937 (citing *Minnesota v. Olson*, 495 U.S. 91, 100 (1990)). A police officer's subjective belief

that exigent circumstances exist, however, is insufficient to justify a warrantless search. *United States v. Richardson*, 208 F.3d 626, 629 (7th Cir. 2000). Rather, the government must establish that the circumstances as they appeared at the moment of entry would lead a reasonable, experienced law enforcement officer to believe that someone inside the house required immediate assistance. *Id.* Although exigent circumstances justify dispensing with a search warrant, they do not eliminate the need for probable cause. *Lindsey v. State*, 916 N.E.2d 230, 239 (Ind. Ct. App. 2009), *trans. denied*. In the context of exigent circumstances, the probable cause element may be satisfied where an officer reasonably believes a person is in danger. *Id.*

Officer Neal received a dispatch indicating that thirteen-year-old J.H. called 911 to report that someone was trying to kill her younger brother. As he was driving to the residence, he received another message from the dispatcher stating that, due to the way J.H. sounded on the phone, “something may be terribly wrong” and it may be “an out-of-control situation.” When Officer Neal arrived and knocked on the front door, Hill answered. She was sweating profusely. Hill refused to speak with Officer Neal and attempted to shut the door. We conclude that, under these circumstances, a reasonable, experienced law enforcement officer would believe that someone inside the home required immediate assistance. *See Richardson*, 208 F.3d at 630 (911 call reporting emergency can be enough to support warrantless search under exigent circumstances exception). Officer Neal’s warrantless entry was justified by exigent circumstances and did not violate the Fourth Amendment.

II. State Constitutional Claim

Hill also argues that Officer Neal's warrantless entry violated Article 1, Section 11 of the Indiana Constitution, which provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

The language of this provision tracks the Fourth Amendment almost verbatim; however, the analysis differs from the Fourth Amendment analysis. *Litchfield v. State*, 824 N.E.2d 356, 359 (Ind. 2005). The legality of a governmental search under the Indiana Constitution turns on an evaluation of the reasonableness of the police conduct under the totality of the circumstances. *Id.* Although we recognize there may be other relevant considerations under the circumstances, we have explained the reasonableness of a search or seizure under the Indiana Constitution as turning on a balance of: (1) the degree of concern, suspicion, or knowledge that a violation has occurred; (2) the degree of intrusion that the method of the search or seizure imposes on the citizen's ordinary activities; and (3) the extent of law enforcement needs. *Id.* at 361.

Officer Neal responded to a dispatch indicating that thirteen-year-old J.H. called 911 to report that someone was trying to kill her younger brother. Although the degree of intrusion was considerable in light of Officer Neal's entry into a private residence, based on the content of the 911 call, Officer Neal had a high degree of concern that someone was battering or killing J.H.'s brother. Further, regarding the extent of law enforcement needs, Officer Neal needed to ensure the safety of the children inside the home. Under

the totality of the circumstances, Officer Neal's warrantless entry was reasonable and did not violate Article 1, Section 11 of the Indiana Constitution.

We conclude that Officer Neal's warrantless entry did not violate Hill's federal or state constitutional rights against unreasonable search or seizure; therefore, Officer Neal was lawfully engaged in the execution of his duties as a law enforcement officer. The evidence is thus sufficient to sustain Hill's conviction for resisting law enforcement.

Affirmed.

BAKER, C.J., and BARNES, J., concur.