MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Rolph Sterson Souffant,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 25, 2022

Court of Appeals Case No. 22A-CR-1219

Appeal from the Tippecanoe Superior Court

The Honorable Daniel J. Moore, Judge

Trial Court Cause No. 79D07-2112-F6-1136

Bradford, Chief Judge.

Case Summary

[1] Rolph Souffant was charged with numerous offenses after he confined a Walmart employee and forcibly resisted law enforcement's efforts to handcuff him. Following a bench trial, he was found guilty of Level 6 felony criminal confinement and Class A misdemeanor resisting law enforcement and not guilty of Class B misdemeanor battery and Class B misdemeanor possession of marijuana. The trial court subsequently sentenced him to a term of 730 days, with 365 days executed in the Tippecanoe County Jail, 180 days executed in criminal corrections, and 185 days suspended to probation. On appeal, Souffant contends that the evidence is insufficient to sustain his convictions and that his sentence is inappropriate. We disagree. However, Souffant also contends, and the State concedes, that the abstract of judgment contains two clerical errors which should be corrected. As such, we affirm Souffant's convictions and sentence and remand with instructions to correct the clerical errors found in the abstract of judgment.

Facts and Procedural History

[2] On December 28, 2021, Lafayette Police Sergeant Daubenmier[1] and Officer Daniel Anthrop observed Souffant walking along State Road 26 in Lafayette. Souffant was walking with "his arm pinned to his side," which caused Officer

[1] Sergeant Daubenmier's first name does not appear to be included anywhere in the record.

Anthrop to become concerned that he "may be pinning a firearm between his clothing and his body." Tr. Vol. II p. 8. Sergeant Daubenmier attempted to talk to Souffant, who refused and kept walking. Sergeant Daubenmier and Officer Anthrop followed Souffant to Walmart, at which time they "asked [their] dispatch to contact loss prevention [at Walmart] and make them aware … that there was a suspicious male entering their business." Tr. Vol. II p. 9.

[3] Upon entering the store, Souffant walked up and down a few aisles before approaching the cashier area, where Gracelyn Gullion had been working as a cashier. Souffant approached Gullion and asked her "if he could have intercourse with" her. Tr. Vol. II p. 51. Gullion was "very shocked" by Souffant's question and responded by saying "no." Tr. Vol. II p. 53. Souffant repeated himself three or four times, and Gullion responded similarly each time. This was not a normal customer interaction and Gullion observed that Souffant's demeanor "just seemed very off, like something was wrong." Tr. Vol. II p. 51.

[4] Gullion then started walking away from Souffant "towards the cash office and he followed [her]." Tr. Vol. II p. 51. Gullion then "started running and [Souffant] chased [her]." Tr. Vol. II p. 52. Once she got past a wall near the cash room, Gullion ran into the cash room and the door locked behind her. Gullion then observed on a camera screen showing the outside of the cash office door that Souffant was "wiggling" the door handle and knocking on the door. Tr. Vol. II p. 52.

[5] While Souffant was pursuing Gullion, Karen Korty, a seventy-year-old part-time Walmart employee, had been pushing a cart of merchandise to an area behind the customer-service desk near the cash room to be sorted into bins. As Korty started to put items in the bins, she observed Souffant trying to open the door to the cash room. Souffant asked Korty if it was locked, and she answered in the affirmative.

[6] With the cart between them, Souffant then asked Korty if she wanted to have sex with him. Thinking that she must have misunderstood and "that can't be what he's asking me," Korty asked Souffant to repeat himself. Tr. Vol. II p. 35. Souffant repeated his question before asking "can I lick you?" Tr. Vol. II p. 35. Korty responded "no" after which Souffant asked "why not?" Tr. Vol. II p. 35. Korty replied, "why would you want to?" Tr. Vol. II p. 35. Korty felt "trapped" behind the cart and with a locked door, which she did not have access to open, behind her. Tr. Vol. II p. 36.

[7] When Korty observed police arrive, she attempted to start working again, but Souffant "reached over the cart and he grabbed [her] by the arms, and he started pushing, I, and I yelled at him to let me go, and he started pushing the cart to the side to get around it." Tr. Vol. II p. 37. Korty "was trying to pull away, but the cart was between [her and Souffant], and he kept pushing on the cart." Tr. Vol. II p. 37. Souffant's hold on Korty was "a very tight, firm hold," and she "couldn't get him to let go." Tr. Vol. II p. 37. Souffant pulled with enough force that Korty "was half leaning over the cart." Tr. Vol. II p. 37. Souffant's hold on Korty hurt and made her "feel constrained." Tr. Vol. II p.

37. While grabbing Korty, Souffant "looked [her] straight in the eyes. He seemed very focused on whatever he had in mind to do, and um, just very, a very determined attitude." Tr. Vol. II p. 37. Souffant did not release his hold on Korty until police intervened.

[8] Meanwhile, Officer Anthrop had been to the loss-prevention office and had been notified by Dennis Morris, a Walmart asset-protection employee, of an occurrence near the cash room, in an area that was off-limits to customers. Officer Anthrop went to the cash room area along with Officers Zachary Cain and Santerre.[2] Officer Anthrop saw Souffant near the cash room beyond the customer-service desk speaking to someone who was out of his view. Officer Anthrop pointed his gun at Souffant because he was concerned that Souffant was potentially armed and was trying to get into the cash room. Officer Anthrop instructed Souffant "to put his hands up." Tr. Vol. II p. 12. Souffant briefly raised his hands before making "a quick movement towards the person" that Officer Anthrop could not see. Tr. Vol. II p. 12. Officer Cain was able to see that Souffant "had a female cornered uh, back there with a shopping cart in between the two." Tr. Vol. II p. 25. Officer Cain saw Souffant grab Korty. Officer Cain then "initiate[d] balance displacement" and took Souffant to the ground. Tr. Vol. II p. 12.

[2] Officer Santerre's first name does not appear to be included anywhere in the record.

[9] Once Souffant was on the ground, the officers attempted to handcuff him, but he kept "pulling his arms underneath him" causing the officers to have "difficulty gaining control of his wrists to place them in handcuffs." Tr. Vol. II p. 13. Although Souffant asked to be handcuffed, he was, at the same time, actively pulling away and trying to avoid being handcuffed. The struggle continued, and the officers were not able to successfully handcuff Souffant until Officer Santerre deployed his taser. Souffant was then placed under arrest.

[10] On December 29, 2021, the State charged Souffant with Level 6 felony criminal confinement, Class A misdemeanor resisting law enforcement, Class B misdemeanor battery, and Class B misdemeanor possession of marijuana. Following a bench trial, the trial court found Souffant guilty of criminal confinement and resisting law enforcement and not guilty of battery and possession of marijuana. On May 24, 2022, the trial court sentenced Souffant to an aggregate 730-day sentence, with 365 days executed in the Tippecanoe County Jail, 180 days executed in community corrections, and 185 days suspended to probation.

Discussion and Decision

[11] Souffant contends that (1) the evidence is insufficient to sustain his convictions for Level 6 felony criminal confinement and Class A misdemeanor resisting law enforcement, (2) his sentence is inappropriate, and (3) the abstract of judgment contains two clerical errors that require correction. For its part, the State argues that the evidence is sufficient to sustain Souffant's convictions and that his

sentence is not inappropriate but concedes that the matter should be remanded with instructions to correct the clerical errors in the abstract of judgment.

I. Sufficiency of the Evidence

[12] When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146–47 (Ind. 2007) (cleaned up). Stated differently, in reviewing the sufficiency of the evidence, "'we consider only the evidence and reasonable inferences most favorable to the convictions, neither reweighing evidence nor reassessing witness credibility'" and "'affirm the judgment unless no reasonable factfinder could find the defendant guilty.'" *Mardis v. State*, 72 N.E.3d 936, 938 (Ind. Ct. App. 2017) (quoting *Griffith v. State*, 59 N.E.3d 947, 958 (Ind. 2016)).

[13] In order to prove that Souffant committed Level 6 felony criminal confinement, the State was required to prove that Souffant knowingly or intentionally confined Korty without Korty's consent. Ind. Code § 35-42-3-3(a). In order to

prove that Souffant committed Class A misdemeanor resisting law enforcement, the State was required to prove that Souffant knowingly or intentionally forcibly resisted, obstructed, or interfered with a law enforcement officer while the officer is lawfully engaged in the execution of the officer's duties. Ind. Code § 35-44.1-3-1(a)(1). "A person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." Ind. Code § 35-41-2-2(b). "A person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." Ind. Code § 35-41-2-2(a).

A. Criminal Confinement

[14] In challenging the sufficiency of the evidence to sustain his conviction for criminal confinement, Souffant argues that the evidence is insufficient to prove that he intended to confine Korty, asserting instead that "[h]is behavior resulted from panic and survival instinct" and merely represented his desire "to move away from three law enforcement officers charging him with at least one firearm pointed in his direction." Appellant's Br. p. 13. "Knowledge and intent are both mental states and, absent an admission by the defendant, the [trier-of-fact] must resort to the reasonable inferences from both the direct and circumstantial evidence to determine whether the defendant has the requisite knowledge or intent to commit the offense in question." *Stubbers v. State*, 190 N.E.3d 424, 432 (Ind. Ct. App. 2022). "Knowledge or intent may be proven by the defendant's conduct and the natural and usual sequence to which such conduct logically and reasonably points." *Id.*

[15] The evidence supports the reasonable inference that Souffant knowingly or intentionally confined Korty. Souffant followed Gullion to an area behind the customer-service desk where the public was generally not permitted to be. He then asked Korty to have sex with him, backed her into a wall, and grabbed her arms. Korty "was trying to pull away, but [a shopping] cart was between [her and Souffant], and he kept pushing on the cart." Tr. Vol. II p. 37. Souffant did not let go when Korty asked him to do so. His hold on Korty was "a very tight, firm hold," and she "couldn't get him to let go." Tr. Vol. II p. 37. Souffant pulled with enough force that Korty "was half leaning over the cart." Tr. Vol. II p. 37. His hold on Korty caused her to experience pain and made her "feel constrained." Tr. Vol. II p. 37. While grabbing Korty, Souffant "looked [her] straight in the eyes. He seemed very focused on whatever he had in mind to do, and um, just very, a very determined attitude." Tr. Vol. II p. 37.

[16] Souffant testified at trial, offering an alternative account of his actions while inside Walmart. The trial court, acting as the trier-of-fact, was in the best position to judge witness credibility and was not obligated to believe Souffant's alternative explanation for his actions. *Ferrell v. State*, 746 N.E.2d 48, 51 (Ind. 2001) ("It is for the trier of fact to resolve conflicts in the evidence and to decide which witnesses to believe or disbelieve."). Considering the evidence and reasonable inferences in the light most favorable to the judgment, we conclude that the evidence is sufficient to sustain Souffant's conviction for Level 6 felony criminal confinement. Souffant's argument to the contrary amounts to nothing

more than an invitation to reweigh the evidence, which we will not do. *See Mardis*, 72 N.E.3d at 938.

B. Resisting Law Enforcement

[17] As for his conviction for Class A misdemeanor resisting law enforcement, Souffant argues that the evidence is insufficient to prove that he engaged in forcible resistance, asserting that he "did not display strength, power, or violence toward the law enforcement officers." Appellant's Br. p. 15. In support, Souffant cites to this court's recent decision in *Runnells v. State*, 186 N.E.3d 1181, 1184–86 (Ind. Ct. App. 2022), in which this court determined that Runnells's act of twice pulling away while the officer was attempting to handcuff him was insufficient to sustain a conviction for Class A misdemeanor resisting law enforcement.

[18] With regard to what constitutes forcible resistance, the Indiana Supreme Court has held as follows:

> This Court has held that one forcibly resists law enforcement when strong, powerful, violent means are used to evade a law enforcement official's rightful exercise of his or her duties. The level of force certainly need not rise to the level of mayhem. Yet the statute does not demand complete passivity, either. Merely walking away from a law-enforcement encounter, leaning away from an officer's grasp, or twisting and turning a little bit against an officer's actions do not establish forcible resistance.

K.W. v. State, 984 N.E.2d 610, 612 (Ind. 2013) (cleaned up). The Court further held that

> not every passive—or even active—response to a police officer constitutes the offense of resisting law enforcement, even when that response compels the officer to use force. Instead, a person "forcibly" resists, obstructs, or interferes with a police officer when he or she uses strong, powerful, violent means to impede an officer in the lawful execution of his or her duties. But this should not be understood as requiring an overwhelming or extreme level of force. The element may be satisfied with even a modest exertion of strength, power, or violence. Moreover, the statute does not require commission of a battery on the officer or actual physical contact—whether initiated by the officer or the defendant. It also contemplates punishment for the active *threat* of such strength, power, or violence when that threat impedes the officer's ability to lawfully execute his or her duties.

Walker v. State, 998 N.E.2d 724, 727 (Ind. 2013) (emphasis in original).

[19] Based on our review of the record, *Runnells* is distinguishable from the instant case. In that case, Runnells twice attempted to pull away from the officer as the officer attempted to handcuff him while the two were walking towards the officer's patrol vehicle. *Runnells*, 186 N.E.3d at 1184. Here, officers took Souffant to the ground after observing him acting violently towards a Walmart employee in an area that was generally closed to the public. Once Souffant was on the ground, the officers attempted to handcuff him, but he kept "pulling his arms underneath him" causing the officers to have "difficulty gaining control of his wrists to place them in handcuffs." Tr. Vol. II p. 13. Officer Anthrop testified that in his experience, under normal circumstances it takes approximately five seconds to handcuff someone. In this instance, it took far longer as the struggle continued and the officers were not able to successfully

handcuff Souffant until Officer Santerre deployed his taser. Officer Anthrop testified that given the circumstances and Souffant's behavior to that point, the struggle would have continued longer without taser deployment.

[20] Again, the Indiana Supreme Court has held that the element of forcible resistance "may be satisfied with even a modest exertion of strength, power, or violence." *Walker*, 998 N.E.2d at 727. The evidence in this case is sufficient to prove that Souffant acted with at least a modest exertion of strength, power, or violence when he attempted to resist the officers' attempts to handcuff him. Again, Souffant's argument to the contrary amounts to nothing more than an invitation to reweigh the evidence, which we will not do. *See Mardis*, 72 N.E.3d at 938.

II. Appropriateness of Sentence

[21] Indiana Appellate Rule 7(B) provides that "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." In analyzing such claims, we "concentrate less on comparing the facts of [the case at issue] to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant's character." *Paul v. State*, 888 N.E.2d 818, 825 (Ind. Ct. App. 2008) (internal quotation omitted), *trans. denied*. The defendant bears the

burden of persuading us that his sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

[22] Again, Souffant was convicted of Level 6 felony criminal confinement and a Class A misdemeanor resisting law enforcement. A person who commits a Level 6 felony "shall be imprisoned for a fixed term of between six (6) months and two and one-half (2½) years, with the advisory sentence being one (1) year." Ind. Code § 35-50-2-7(b). "A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year." Ind. Code § 35-50-3-2. The trial court sentenced Souffant to 730 days, the equivalent of two years, for the criminal confinement conviction and 365 days for the resisting conviction. The trial court ordered the sentences to run concurrently, for an aggregate sentence that was less than the advisory for a Level 6 felony. Furthermore, the trial court ordered that of the 730 days, 365 days were to be executed in county jail, 180 days were to be executed in community corrections, and 185 days were to be suspended to probation.

[23] In arguing that his sentence is inappropriate in light of the nature of his offenses, Souffant "maintains his innocence" and attempts to shift the blame for his actions by claiming that "much of the current offense was precipitated and escalated by law enforcement's actions." Appellant's Br. p. 18. We cannot agree. Once in Walmart, Souffant sexually propositioned two different female employees. After one successfully evaded him, he physically confined the other, a seventy-year-old woman, in an area where the public was not generally permitted to be. He then struggled with law enforcement, continuing to

struggle until one of the officers deployed his taser. Both in finding Souffant guilty and in sentencing him, the trial court specifically rejected Souffant's alternate version of the events. The evidence establishes that he acted in an aggressive and violent manner in committing both of the offenses.

[24] As for his character, Souffant was born in September of 2002, making him nineteen years old at the time he committed the instant offenses. Souffant amassed juvenile adjudications from the State of Florida for what would be the following crimes if committed by an adult: three counts of felony burglary, felony grand theft, misdemeanor trespass, and two counts of misdemeanor criminal mischief. At the time of sentencing, he had criminal charges pending in Boone County for two counts of Level 6 felony auto theft, Class A misdemeanor operating a vehicle while intoxicated, Class A misdemeanor resisting law enforcement, Class B misdemeanor public intoxication, and Class C misdemeanor operating a vehicle while intoxicated. In sentencing Souffant, the trial court found that Souffant had violated the conditions of his pre-trial release on the Boone County charges by committing the instant offenses. In addition, he was determined to be a moderate risk to reoffend. Souffant's criminal history and his apparent unwillingness to follow the laws of this State reflect poorly on his character. *See Brown v. State*, 160 N.E.3d 205, 221 (Ind. Ct. App. 2020) (providing that even a minor criminal history is a poor reflection of a defendant's character). He has failed to convince us that his aggregate 730-day sentence is inappropriate.

III. Clerical Errors on Abstract of Judgment

[25] The Indiana Supreme Court has noted that "Indiana trial courts use the abstract of judgment to convey the final judgment to the receiving authority, and that it is the abstract of judgment which embodies the final judgment of the trial court." *Robinson v. State*, 805 N.E.2d 783, 793 (Ind. 2004) (internal quotation omitted).

> As a general rule, when we are faced with a discrepancy between a sentencing order and an abstract of judgment, we conclude that the sentencing statement rather than the abstract of judgment controls. This is so because an abstract of judgment is distinct from a written sentencing order and is not the judgment of conviction. It is a form issued by the Department of Correction and completed by trial judges for the convenience of the Department.

McElroy v. State, 865 N.E.2d 584, 588 (Ind. 2007) (cleaned up).

[26] Souffant claims, and the State concedes, that the trial court made two clerical errors on the abstract of judgment. First, as to the confinement charge, the abstract of judgment wrongly lists the total sentence as 545 days, with 365 days "jail executed" and 180 days executed on community corrections. Appellant's App. Vol. II p. 69. Again, the sentence imposed by the trial court for this charge was 730 days, with 365 days executed in the county jail, 180 days executed in community corrections, and 185 days on probation. As the parties assert, the abstract of judgment should be corrected to accurately reflect the sentence imposed by the trial court. Second, in the comments section to the

confinement charge, the abstract of judgment indicates that the sentence is to run "Concurrent: Count II[.]" Appellant's App. Vol. II p. 69. As charged, Count II applied to the misdemeanor battery charge, for which Souffant was found not guilty. The resisting charge was originally charged as Count III. Again, as the parties assert, the abstract of judgment should be corrected to reflect that the sentence will run concurrent to Count III. We therefore remand to the trial court with instructions to make the two above-mentioned corrections to the abstract of judgment.

[27] The judgment of the trial court is affirmed and remanded with instructions.

Brown, J., and Pyle, J., concur.