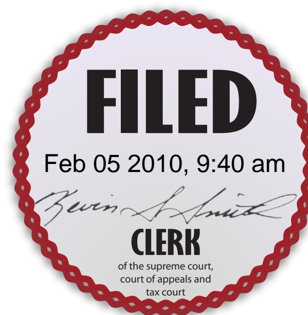
Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ANN M. SUTTON
Marion County Public Defender
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JAMES E. PORTER
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

KENNETH COLLINS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

No. 49A04-0906-CR-348

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Israel Cruz, Commissioner
Cause No. 49G16-0903-FD-32510

February 5, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Kenneth Collins appeals his conviction for resisting law enforcement as a class A misdemeanor.[1] Collins raises one issue, which we revise and restate as whether the evidence is sufficient to sustain his conviction. We affirm.

The facts most favorable to the conviction follow. In the early morning hours of March 15, 2009, Indianapolis Metropolitan Police Officers Shawn Cook and Grady Copeland, Jr., each travelling separately, responded to a "Patrol When Possible" call for 1142 Somerset Avenue regarding a domestic dispute. Transcript at 7. When they arrived, the officers observed a woman with clothing in disarray and blood on her shirt. Her face was red and bleeding, and it "appeared to be swollen." Id. at 19. The woman "was scared" and "had been crying." Id. at 9. After learning that Collins was also in the residence, Officer Cook drew his taser for safety and began checking the rest of the home. Collins was located in a bedroom, and Officer Cook ordered Collins out of the bedroom and to walk towards him.

Collins complied with Officer Cook and moved into the living room, placed his hands behind his back, and was placed in handcuffs. "Directly after" Officer Cook placed Collins in handcuffs, Collins stated that he "was going to the car," and "[Collins] started to pull away towards the front door . . . ." Id. at 13. Officer Cook resisted Collins's attempt to leave, "at which time [Collins] then lunged even harder towards the front door." Id. at 14. Officer Copeland also "heard a scuffle," and he saw Collins "forcefully pulling away from Officer Cook[']s grasp. [Collins] was jerking his shoulder

[1] Ind. Code § 35-44-3-3 (Supp. 2006).

in a violent manner, to get his arms the momentum to be able to pull away from Officer Cook[’]s grasp.” Id. at 20-21. Officer Copeland stated that his “interpretation was that [Collins] was trying to flee out the front door, despite hi[s] being in handcuffs.” Id. at 21.

Officer Cook then took Collins to the ground. Collins attempted to “get back up” and was “roll[ing] over on his side to get his knees and his legs up underneath him.” Id. at 14. Officer Copeland helped Officer Cook keep Collins on the ground by putting “his knees in [Collins’s] back to keep [Collins] pinned down to the ground.” Id. After Officer Copeland provided his assistance, Collins “continued to yell, and was trying to roll back in [sic] forth, to side to side. . . . [and] was stiffening up in attempt to get up.” Id. at 15. Officer Copeland then radioed for “a wagon for a resister.” Id.

After a short time, Officer Copeland “could feel [Collins’s] . . . tension was relieved,” and Officer Copeland got up off of Collins and told Collins that he “needed to remain calm.” Id. at 22. After the officers asked the woman to step into the kitchen, Collins “started yelling and cursing obscenities at [her].” Id. at 23. Officer Copeland again placed all of his body weight on Collins. When Collins still would not stop trying to get up, Officer Copeland “got [Collins] into a wrist lock, and was cranking on his wrist while pressing his left shoulder onto the ground, and repeatedly [told Collins], ‘Stay on the ground and stop resisting.’” Id.

When the wagon arrived, Officer Copeland asked Collins to stand up. After Collins was standing, Collins “turned around to [Officer Copeland], [who] thought [Collins] was going to try and head butt [him].” Id. at 25. Collins then exclaimed to

Officer Copeland, "For you, you are a punk f----- bitch!" Id. at 25-26. Officer Copeland then escorted Collins to the wagon while keeping Collins's left wrist in a wrist lock. After Collins was in the wagon, "he was hitting the inside of the wagon with some part of his body," and "the van was rocking back and forth." Id. at 26.

The State charged Collins with Count I, battery as a class A misdemeanor; Count II, domestic battery as a class A misdemeanor; Count III, domestic battery as a class D felony; and Count IV, resisting law enforcement as a class A misdemeanor. At a bench trial, after the State's presentation of evidence, Collins moved for a directed verdict on all counts. The State did not respond to the motion on Counts I-III, and the trial court granted the motion as to those counts. The trial court found Collins guilty on Count IV, resisting law enforcement as a class A misdemeanor, and sentenced Collins to 365 days in the Marion County Jail, with 185 days suspended.

The sole issue is whether the evidence is sufficient to sustain Collins's conviction for resisting law enforcement as a class A misdemeanor. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. Id. We consider conflicting evidence most favorably to the trial court's ruling. Id. We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis

of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id.

The offense of resisting law enforcement is governed by Ind. Code § 35-44-3-3, which provides in relevant part that "[a] person who knowingly or intentionally . . . forcibly resists, obstructs, or interferes with a law enforcement officer . . . while the officer is lawfully engaged in the execution of the officer's duties . . . commits resisting law enforcement, a Class A misdemeanor . . . ." Thus, to convict Collins of resisting law enforcement as a class A misdemeanor, the State needed to prove that Collins: (1) knowingly or intentionally; (2) forcibly resisted, obstructed, or interfered; (3) with Officer Cook[2] while he was lawfully engaged in the execution of his duties as an officer. Ind. Code § 35-44-3-3(a)(1). Collins argues that "if Collins did resist, it was against Officer Copeland . . . ." Appellant's Brief at 4. Collins argues that "[t]he State failed to prove Collins knowingly used force to resist, obstruct or interfere with Officer Cook's efforts to arrest him. Collins cooperated with Cook, and then after cuffed, said he was going to the car. Cook yanked him back and put him on the ground." Id. Collins argues that "he was a little too helpful, as he wished to go immediately to the police car." Id. at 5.

The Indiana Supreme Court recently examined what constitutes forcible resistance under the statute for resisting law enforcement in Graham v. State, 903 N.E.2d 963 (Ind. 2009). In Graham, the defendant refused to present his arms to be handcuffed. 903

[2] Officer Cook was the only officer named in the charging information for resisting law enforcement.

N.E.2d at 965. The Court, relying on Spangler v. State, 607 N.E.2d 720 (Ind. 1993), noted that "the word 'forcibly' modifies 'resists, obstructs, or interferes' and that force is an element of the offense." Id. However, Graham goes on to say that "[t]he force involved need not rise to the level of mayhem." Id. The Court stated:

> In Johnson v. State, 833 N.E.2d 516, 517 (Ind. Ct. App. 2005), a defendant in custody "pushed away with his shoulders while cursing and yelling" while the officer attempted to search him. As officers attempted to put him into a police vehicle, Johnson "stiffened up" and the police had to get physical in order to put him inside. Id. The Court of Appeals correctly held that Johnson's actions constituted forcible resistance.

Id. at 965-966. The Court held that "[w]hile even 'stiffening' of one's arms when an officer grabs hold to position them for cuffing would suffice," the defendant's mere failure to present his arms for cuffing did not constitute forcible resistance. Id. at 966.

Here, the evidence demonstrated that "[d]irectly after" Officer Cook placed Collins in handcuffs, Collins told Officer Cook that he "was going to the car," and Collins tried to make his way towards the front door. Transcript at 13. When Officer Cook thwarted Collins's attempt to leave, Collins "lunged even harder towards the front door," and Officer Cook was then forced to take Collins to the ground. Id. at 14. Collins repeatedly tried to get back to his feet, and he was "roll[ing] over on his side to get his knees and his legs up underneath him." Id. Officer Copeland "heard a scuffle" and saw Collins "forcefully pulling away from Officer Cook[']s grasp. [Collins] was jerking his shoulder in a violent manner, to get his arms the momentum to be able to pull away from Officer Cook[']s grasp." Id. at 20-21. Officer Copeland was compelled to assist Officer

Cook. Collins "continued to yell, and was trying to roll back in [sic] forth, to side to side," and "[Collins] was stiffening up in attempt to get up." Id. at 15.

Based upon our review of the record, we conclude that evidence of probative value exists from which the trial court could reasonably have found beyond a reasonable doubt that Collins committed resisting law enforcement as a class A misdemeanor.

For the foregoing reasons, we affirm Collins's conviction for resisting law enforcement as a class A misdemeanor.

Affirmed.

MATHIAS, J., and BARNES, J., concur.