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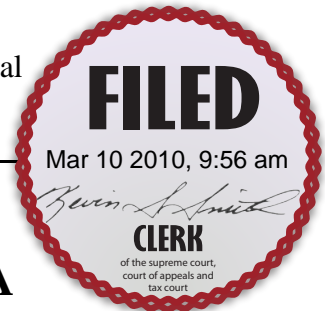
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**IN THE
COURT OF APPEALS OF INDIANA**

JORDAN CLAYTON,
Appellant-Defendant,

VS.

No. 49A02-0907-CR-638

STATE OF INDIANA,
Appellee-Plaintiff.

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Rubick, Commissioner
Cause No. 49F19-0902-CM-27290

March 10, 20~~2~~10

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Jordan Clayton appeals his conviction of Class A misdemeanor resisting law enforcement.¹ Finding the evidence sufficient, we affirm.

FACTS AND PROCEDURAL HISTORY

On February 21, 2009, Indianapolis Metropolitan Police Department Officer Anthony Finnell was working in full uniform as a security officer at Skateland Skating Rink. Officer Finnell exited the building to investigate a car blocking the road and found Clayton in a struggle with two employees of Skateland, Art Pepper and Elmer Akers. Officer Finnell approached, made eye contact with Clayton, announced he was a police officer, and ordered Clayton to put his hands behind his back. Clayton struggled against Officer Finnell's attempts to handcuff him, continued to struggle after handcuffed, and then "jerked away" as Officer Finnell walked Clayton to the Skateland office. (Tr. at 8.)

The State charged Clayton with Class A misdemeanor resisting law enforcement for his resistance of Officer Finnell.² The court found Clayton guilty, sentenced him to 180 days, suspended all time not yet served, and ordered 180 days of probation.

DISCUSSION AND DECISION

"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." *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007) (quotation omitted). It is the role

¹ Ind. Code § 35-44-3-3(a).

² The State also charged Clayton with Class B misdemeanor disorderly conduct, *see* Ind. Code § 35-45-1-3, for his scuffle with Akers and Pepper outside Skateland prior to Officer Finnell's arrival. At trial, the State presented testimony from only Officer Finnell. Clayton moved for directed verdict against the State, and the trial court granted that motion prior to Clayton's presentation of evidence.

of the fact-finder, and not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* We consider only the evidence favorable to the conviction and affirm unless no reasonable fact-finder could have found the elements of the crime proven beyond a reasonable doubt. *Id.* at 146-47. The evidence need not overcome every reasonable hypothesis of innocence; it needs permit only a reasonable inference of guilt *Id.* at 147.

Clayton was charged with resisting law enforcement by “knowingly and forcibly” resisting, obstructing, or interfering with a law enforcement officer while the officer is lawfully engaged in the execution of his duties. (Appellant’s App. at 12.) *See also* Ind. Code § 35-44-3-3(a).

Clayton asks that we consider the facts “in the context of the total circumstances that took place at the skating rink parking lot,” because the events were “set in motion by the actions of the two civilian security people who did not appear at trial.” (Appellant’s Br. at 6.)

We will not overturn a conviction on this basis. Regardless what transpired between Clayton and the two employees of the skating rink, Clayton had a legal responsibility to halt his resistance when Officer Finnell approached and identified himself as a law enforcement officer. *See* Ind. Code § 35-44-3-3(a). Officer Finnell testified he made eye contact with Clayton so Clayton would know Officer Finnell was a police officer in full uniform. (Tr. at 7 (“I made sure he saw my uniform, but he still was struggling with getting his hands behind his back.”).) Nevertheless, Clayton continued to resist Officer Finnell’s attempts to handcuff him. (*Id.* at 8 (Clayton “was still struggling and continued to refuse my direct orders to bring

his hands behind his back”).)

Clayton also asserts he should not be convicted of resisting Officer Finnell for “the whole incident next to the car” because it was “being controlled by the civilians.” (Appellant’s Br. at 7.) We disagree. The “civilians” to which Clayton refers are two Skateland employees who assisted Officer Finnell as he handcuffed Clayton. Clayton has not cited any evidence or authority to support his allegation that Officer Finnell was not in control of the situation after he arrived.

Finally, Clayton asserts jerking away from Officer Finnell as they walked into the office of the skating rink was insufficient to constitute “forcible resistance.” (Id. Appellant’s B. at 8.) “Jerking away” was not Clayton’s only act of resistance; Clayton resisted Officer Finnell’s attempts to handcuff him, and even after he was in handcuffs Clayton “was still highly upset and agitated, cursing and moving about, and [Officer Finnell] actually forced him to the ground for about a minute or so and then [Officer Finnell] told him you’re going to calm down and we’ll get you up, and he finally started to calm down.” (Tr. at 8.)

Nor was Clayton’s jerking away a form of “passive resistance” that could not demonstrate the forcible resistance required for a conviction of resisting law enforcement. *See, e.g., Graham v. State*, 903 N.E.2d 963, 966 (Ind. 2009) (State failed to prove forcible resistance where officers placed Graham’s hands behind his back, but there was no evidence Graham struggled against the officers as they moved his hands.). Officer Finnell testified: “It was almost like he leaned into me, but then he jerked away, and at that point is when I had to forcibly force him into the skating rink and then we got him into the office.” (Tr. at 8.)

Thus, we reject Clayton's assertion that his resistance was merely passive.

Affirmed.

KIRSCH, J., and DARDEN, J., concur.