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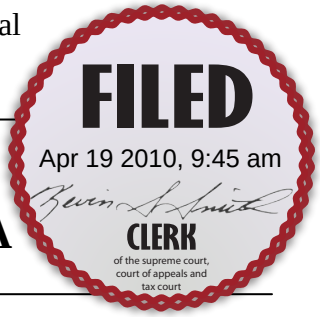

IN THE COURT OF APPEALS OF INDIANA

NORMAN WHITE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0910-CR-950
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebekah Pierson-Tracy, Judge
Cause No. 49F19-0906-CM-58341

April 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Norman White appeals his conviction for resisting law enforcement as a class A misdemeanor.[1] White 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. On June 21, 2009, Indianapolis Metropolitan Police Officer Troney Harris and other law enforcement officers were at an apartment complex in Indianapolis apprehending and arresting a person related to White.[2] A crowd of about "twenty or thirty people" formed and were "getting excited" and yelling at the officers due to the arrest. Transcript at 21. At some point White approached the officers and began "yelling" and "cursing" at the officers. Id. at 7-8. White said to the officers, "you mother f---ers can't do this, you mother f---ers not going to do anything to my cousin." Id. at 14. White also yelled "get your f---ing hands off my cousin." Id. at 20-21. After White was yelling, the crowed was "getting louder, as well." Id. at 18.

Officer Harris asked White to be quiet at least four to five times. Another officer at the scene "told [White] to get back several times," but White "kept coming forward." Id. at 21. That officer also told White to "quiet down" three or four times. Id. A weapon was on the ground near the officers and the person related to White who was being detained. At the time that White and others approached the officers, the officers had not yet had time to secure the weapon, so the officers were "trying to get everybody back."

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

[2] Officer Harris testified that White referred to the person being arrested as his cousin. White testified that the person being arrested was his little brother.

Id. at 24. White did not quiet down, and Officer Harris told White "to turn around and put his hands behind his back." Id. at 9. White did not turn around but "brought his fists up and stood in an aggressive stance [and] put one foot behind himself . . . ." Id.

At some point, Officer Harris "pulled out [his] Tazer" and White's sister "grabbed [White's] shoulders to turn him around . . . ." Id. Once White turned around with his back to Officer Harris, Officer Harris noticed that White "still had his fists balled." Id. Using his left hand, Officer Harris grabbed White's forearm so that he "could put [the] Tazer up and put the handcuffs out." Id. at 9. White then "turned around" to "snatch his arm out of [Officer Harris's] hands." Id. at 10. White used "enough force to pull his hand out of [Officer Harris's] grip." Id. at 11. Officer Harris then "[t]azed" White, and White then complied with Officer Harris's orders and was handcuffed and placed under arrest. Id.

On June 22, 2009, the State charged White with resisting law enforcement as a class A misdemeanor and disorderly conduct as a class B misdemeanor. During the bench trial on September 9, 2009, Officer Harris testified that during the incident at the apartment complex on June 21, 2009, he was concerned for his safety and the safety of others because there was a gun in the area and because of the situation involving the crowd. The trial court found White guilty of resisting law enforcement as a class A misdemeanor and not guilty of disorderly conduct. The court sentenced White to 180 days, with four days executed for time served and 176 days suspended to probation. The court also ordered that White complete thirty-two hours of community service work and

that White's probation would terminate once he completed the required community service work.

The sole issue is whether the evidence is sufficient to sustain White's conviction. 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 White of resisting law enforcement as a class A misdemeanor, the State needed to prove that White: (1) knowingly or intentionally; (2) forcibly resisted, obstructed, or interfered; (3) with Officer Harris or the other police officers while they were lawfully engaged in the execution of their duties as officers. See Ind. Code § 35-44-3-3(a)(1).

White argues that "White's actions during his arrest can be characterized as active," but that "the trial court's finding of guilt was erroneous because the State provided no evidence . . . White directed any strength, power, or violence toward the officer who was arresting him." Appellant's Brief at 5-6. White argues that his "initial 'aggressive stance' was immediately followed by his turning around with the aid of his sister." Id. at 6. White argues that he "may have made fists but this should have been viewed as a way to control anger and aggression not a display of anything strong, powerful or violent." Id. at 7. White further argues that "pulling, twisting and turning away do not rise to the level of resistance" and that "[p]ulling away does not rise to the level of forcible resistance." Id.

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 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, the Court in Graham also stated 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. In Graham, the evidence indicated that the defendant did not comply with directions to present his wrists for cuffing, but "[did] not reflect even the modest level of resistance described in Johnson." Id. at 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.

Here, the evidence reveals that White was asked "to get back several times" but White "kept coming forward." Transcript at 21. Officer Harris instructed White to turn around and put his hands behind his back, but White "brought his fists up and stood in an aggressive stance [and] put one foot behind himself . . . ." Id. at 9. After White's sister urged him to turn around, White turned around and Officer Harris noticed that White "still had his fists balled." Id. Officer Harris grabbed White's "forearm" so that he "could put [the] Tazer up and put the handcuffs out," but White then "turned around" to "snatch his arm out of [Officer Harris's] hands" and White used "enough force to pull his hand out of [Officer Harris's] grip." Id. at 9-11, 16. White complied with Officer Harris's orders and was handcuffed only after Officer Harris "[t]azed" him. Id. at 11.

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 White committed resisting law enforcement as a class A misdemeanor. See, e.g., Johnson v. State, 833 N.E.2d 516, 517, 519 (Ind. Ct. App. 2005) (holding that the evidence was sufficient to convict the defendant of resisting law enforcement where

defendant "turned away and pushed away with his shoulders while cursing and yelling" and then defendant "stiffened up" when the officers attempted to place him into the police vehicle); see also Dallaly v. State, 916 N.E.2d 945, 950-951 (Ind. Ct. App. 2009) (holding that the evidence was sufficient to sustain the defendant's conviction for resisting law enforcement as a class A misdemeanor where the defendant "turned aggressively" toward a police officer after being told that he was not free to leave, "pull[ed] his hands up inside [his clothing] so his hand was very difficult to [handcuff]," and constantly struggled, fought, kicked, and pushed back on the officers).[3]

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

Affirmed.

NAJAM, J., and VAIDIK, J., concur.

[3] White also directs us to Berberena v. State, 914 N.E.2d 780 (Ind. Ct. App. 2009), trans. denied, Colvin v. State, 916 N.E.2d 306 (Ind. Ct. App. 2009), trans. denied, and Ajabu v. State, 704 N.E.2d 494 (Ind. Ct. App. 1998). In Berberena, this court found the evidence insufficient to sustain the defendant's conviction for resisting law enforcement and noted that there was no evidence that the defendant stiffened his arms or otherwise contributed to the struggle and that the police officer's testimony regarding his struggle to place handcuffs on the defendant was ambiguous. See Berberena, 914 N.E.2d at 781-783. In Colvin, this court found the evidence insufficient to sustain the defendant's conviction for resisting law enforcement where the evidence showed that police officers ordered the defendant to take his hands out of his pockets, and the defendant did not comply but did not stiffen his arms or otherwise forcibly resist the officers. See Colvin, 916 N.E.2d at 307-309. In Ajabu, this court reversed a conviction where the defendant resisted police efforts to remove a flag from his possession and the record revealed that he "twisted and turned a little as he held onto his flag." Ajabu, 704 N.E.2d at 495. Here, Officer Harris's testimony regarding his attempt to place White in handcuffs was not ambiguous and there was testimony that White "turned around" to "snatch his arm out of [Officer Harris's] hands" and that White used "enough force to pull his hand out of [Officer Harris's] grip." Transcript at 9-11. We find the facts of this case distinguishable from those in Berberena, Colvin, and Ajabu.