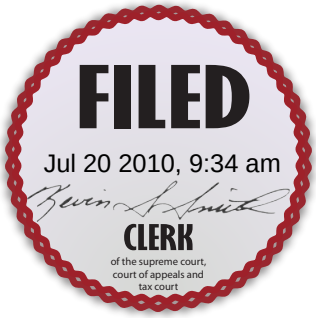

ATTORNEY FOR APPELLANT:

BARBARA J. SIMMONS
Oldenburg, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

KEVIN EARLY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0912-CR-701
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Israel Cruz, Judge Pro Tempore
Cause No. 49F10-0907-CM-65116

July 20, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Kevin Early appeals from his conviction after a bench trial for resisting law enforcement, a class A misdemeanor.

We affirm.

ISSUE

Whether sufficient evidence supports Early's conviction.

FACTS

At approximately 10:00 p.m. on July 16, 2009, Indianapolis Metropolitan Police Department ("IMPD") Officers Freddie Haddad and Mike Beatty were dispatched to the scene of a disturbance "with possibly a large fight going on in front of" the house located at 2342 Indianapolis Avenue in Marion County. (Tr. 6). As he approached the scene, Officer Haddad observed approximately eight to ten people in the yard and on the porch of the house. He heard "a lot of yelling and screaming – what sounded like a fight going on." (Tr. 6).

Officer Haddad exited his squad car, and "could tell by the body language and the yelling that there was some sort of fight or scuffle going on." (Tr. 7). Officers Haddad and Beatty called for back-up assistance. Subsequently, the officers noted that "most of the yelling and screaming and stuff was directed towards" Early. (Tr. 7). Early, who was sweating profusely, "was screaming and yelling back [and] pushing his way through people . . . towards the sidewalk." (Tr. 7).

Officers Haddad and Beatty spoke with the woman who had called the police. Afterwards, they attempted to remove Early to an area located "approximately two (2) houses south" of the disturbance. (Tr. 12). When Officer Beatty grabbed Early's arm to steer him away from his screaming family members, Early pulled his arm away. Officer Haddad also grabbed Early's arm. Again, Early pulled away, shouting "F--- you, I don't have to listen to you. I'm not going with you." (Tr. 12, 28). Each officer then grabbed one of Early's arms, led him from the scene of the disturbance, and sat him on the curb.

After being removed from the scene, Early remained "extremely boisterous, loud, [ ] sweating profusely [and] very agitated." (Tr. 13). Officer Haddad testified[1] that Early "was yelling back at the crowd" and told the officers that "he was upset with his family." (Tr. 15). He jumped up from the curb several times and tried to return to the disturbance. Finally, after Early made additional attempts to return to the disturbance, Officer Haddad handcuffed him and sat him on the curb.

Even after being handcuffed, Early was "still bickering back and forth with" his family members. (Tr. 19). Officer Haddad later testified, "[S]ome of the disturbance had spilled out to the sidewalk, a few of the people were yelling at [Early] and he was yelling back. He jumped up and he was trying to . . . get back into the disturbance." (Tr. 19). Several times, the officers had to grab Early and "s[i]t him back down." (Tr. 19). While Officers Haddad and Beatty waited for the police wagon, some of Early's family

[1] Officer Haddad was the only law enforcement witness for the State.

members advised that Early might be in pain from being handcuffed, due to injuries that he had previously sustained in a car accident.

On July 17, 2009, Early was charged with resisting law enforcement as a class A misdemeanor. He was tried to the bench on November 16, 2009. Officer Haddad testified to the foregoing facts. Early testified that he had complained of pain to the officers, to no avail; and that his act of pulling away was a reflexive reaction to pain from the handcuffs. At the close of the evidence, the trial court remarked,

> The Court having listened very carefully to the evidence presented, and having accessed [sic] the credibility of the witnesses now issues its ruling. What is interesting is that I think that for the most part both witnesses are credible. But I don't believe that Mr. Early's resistance is clean cut, uh, to the pain that he had in his arm. Mr. Early testified with respect to his resistance. He said he, referring to the officer, did not understand why I resisted. And he claims that it was from the uh, cuffs, and then upon examination after defense counsel realized what his client had said, asked the question were you resisting because you were in fact reacting or was it reflex from the pain[?] Also there is the continued resistance. And while you're correct he's not been charged with Resisting by flight, it's indicative of his demeanor and his behavior that day; . . . coupled . . . with what Mr. Early was saying to the officers, there's no question that there was active resisting by the defendant; and so the Court finds the defendant guilty as charged of Resisting Law Enforcement by force, a class A misdemeanor.

(Tr. 40-41). Early now appeals.

DECISION

Early argues that the State failed to prove beyond a reasonable doubt that he committed the offense of forcibly resisting law enforcement officers where (1) "he did nothing more than pull his arms away from the officers after the [sic] grabbed his arms

due to the pain caused by the officers grabbing his injured arms," and (2) his reaction "was a reflex reaction to the officers grabbing his injured arms." Early's Br. at 5, 8.

In reviewing sufficiency of the evidence claims, it is well-settled that

> 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) (quotations and citations omitted).

In order to convict Early of resisting law enforcement as a class A misdemeanor, the State was required to prove that he knowingly or intentionally forcibly resisted, obstructed, or interfered with Officers Haddad and Beatty, during the officers' rightful execution of their law enforcement duties. Ind. Code § 35-44-3-3(a)(1). Our Supreme Court has previously explained that an individual "forcibly resists" when "strong, powerful, violent means are used to evade a law enforcement official's rightful exercise of his or her duties." *Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993). To constitute forcibly resisting, "[t]he force involved need not rise to the level of mayhem." *Dallaly v. State*, 916 N.E.2d 945, 950 (Ind. Ct. App. 2009).

In support of his claim, Early cites as analogous the following three cases in which the defendants' convictions for resisting law enforcement were reversed. In *Graham v.*

State, 903 N.E.2d 963 (Ind. 2009), Graham refused officers' repeated requests that he present his arms for handcuffing. Officers placed Graham face-down on the ground and handcuffed him. Our Supreme Court reversed his conviction for resisting law enforcement, finding that his refusal to submit to handcuffs, without more, did not constitute use of force. Next, in *Colvin v. State*, 916 N.E.2d 306 (Ind. Ct. App. 2009), Colvin refused to remove his hands from his pockets when police repeatedly ordered him to so. The officers had to place Colvin on the ground in order to handcuff him. In reversing Colvin's conviction, a panel of this court concluded that the State failed to "present any evidence that Colvin used force or 'made threatening or violent actions' to contribute to the struggle with the officers." *Id.* at 308. Lastly, in *Berberena v. State*, 914 N.E.2d 780 (Ind. Ct. App. 2009), Berberena refused to comply with an officer's command to place his hands behind his back for handcuffing. In reversing Berberena's conviction, we found that the State failed to present sufficient evidence "that Berberena's opposition was forceful rather than merely difficult." *Id.* at 783.

Early's reliance upon *Graham*, *Colvin*, *Berberena* is misplaced because the defendants therein engaged in passive resistance by refusing to present their wrists for cuffing. Absent any evidence that the defendants used the requisite force via "strong, powerful, violent means" to evade law enforcement officers' rightful exercise of their duties, there was no other option but to reverse Graham, Colvin, and Berberena's convictions for resisting law enforcement on the ground of insufficiency of the evidence. *See Spangler*, 607 N.E.2d at 723. The instant facts, however, present a different scenario,

from which a rational trier of fact could conclude that Early forcibly resisted, obstructed, or interfered with Officers Haddad and Beatty's rightful execution of their law enforcement duties.

At trial, Officer Haddad testified that when Officer Beatty tried to grab Early's arm to lead him from the contentious scene of the disturbance, Early "yanked" his arm from Officer Beatty's grip. (Tr. 11). Haddad testified further that he then grabbed Early's other arm, to which Early responded with an obscenity and "[v]iolently yank[ed] his arm out of [Haddad]'s grip." (Tr. 12). During Early's testimony, he admitted that he had pulled his arms away from Officers Haddad and Beatty. Although Early characterized his act of pulling away as a reflexive reaction to pain, the record reveals that the trial court did not find his testimony to be entirely credible.

The State has carried its evidentiary burden. We initially note that the uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal. *See Mathis v. State*, 859 N.E.2d 1275, 1281 (Ind. Ct. App. 2007). Officer Haddad, and Early himself, testified that Early pulled his arms away from the officers as they tried to steer him from the scene of the disturbance. *See J.S. v. State*, 843 N.E.2d 1013, 1017 (Ind. Ct. App. 2006) (affirming delinquency adjudication for resisting law enforcement where defendant pulled, jerked, and yanked away from officer), *trans. denied.* Based upon the foregoing facts, we conclude that the State presented sufficient evidence from which a rational trier of fact could conclude that Early forcibly resisted, obstructed, or interfered with the officers' rightful exercise of their law enforcement

duties. We regard Early's contention that he pulled his arm away due to pain from a prior injury as an invitation to reweigh the evidence and assess the credibility[2] of the witnesses. *See Drane*, 867 N.E.2d at 146 ("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.").

Affirmed.

BAKER, C.J., and CRONE, J., concur.

[2] In rendering its judgment, the trial court expressed doubts regarding Early's credibility as to the role of Early's prior injury in his reaction to the officers. *See* Tr. 40 (". . . I don't believe that Mr. Early's resistance is clean cut, uh, to the pain that he had in his arm."). A reasonable inference may be drawn from the evidence that Early's reaction of pulling away was consistent with his demonstrated desire to return to the scene of the disturbance in order to continue arguing with his family, which unruly conduct the police thwarted by handcuffing him and removing him from the contentious scene.