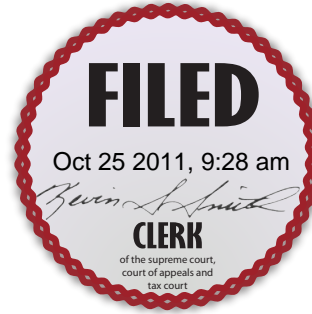


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

HENRY PORTER,)
)
Appellant-Defendant,)
)
vs.) No. 82A04-1104-CR-168
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Robert J. Pigman, Judge
Cause No. 82D02-1011-FD-1139

October 25, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Henry Porter challenges his conviction of Class A misdemeanor resisting law enforcement.¹ Porter argues the evidence was insufficient to support his conviction. We affirm.

FACTS AND PROCEDURAL HISTORY

On November 14, 2010, Evansville Police Officers Andy Carlisle and Nathan Hassler responded to a domestic battery call. On arrival, the officers talked with the person who had placed the call² and she informed them the person who hit her was inside the house. The officers obtained permission from the caller to enter the house and found Porter leaning against a counter in the kitchen. Because Porter's hand was very close to a block of knives, Officer Carlisle asked Porter to come over and talk to him. Porter ignored Officer Carlisle's request for him to move and his request for Porter to put his hands where they could be seen. Officer Carlisle then placed his hand on Porter in an attempt to forcibly move him away from the knives. Porter reacted by struggling and flailing about "wildly and violently." (Tr. at 16.)

During the struggle, Officer Carlisle was struck in the mouth causing his lip to swell and bleed. Officer Hassler then stepped in to assist, and the officers together managed to handcuff Porter after a struggle in which Porter continued to "thrash around, kick his legs around and scream and holler." (*Id.* at 19.)

¹ Ind. Code § 35-44-3-3(a)(1).

² The identity of the caller is not established in the record.

DISCUSSION AND DECISION

In reviewing sufficiency of evidence, we may not reweigh evidence or judge credibility of witnesses. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the trial court's decision, *id.*, and affirm unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000).

A person who knowingly or intentionally "forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of the officer's duties" commits resisting law enforcement. Ind. Code § 35-44-3-3(a)(1). A person "who directs strength, power or violence towards police officers or who makes a threatening gesture or movement in their direction" acts "forcibly." *Price v. State*, 622 N.E.2d 954, 963 n.14 (Ind. 1993).

Porter argues the evidence did not demonstrate he resisted forcibly. We disagree. Officer Carlile described a violent struggle in which Porter was kicking and flailing, and during which Porter struck Officer Carlile in the mouth. Officer Hassler corroborated Officer Carlile's account. Porter's attempt to characterize his actions as anything less than forcible resistance is an invitation to reweigh the evidence and judge the credibility of the witnesses, which we may not do. *See, e.g., Lopez v. State*, 926 N.E.2d 1090, 1094 (Ind. Ct. App. 2010) (that defendant would not allow officer to move defendant's hands into cuffing position led to permissible inference that defendant had forcibly resisted arrest).

Accordingly, we affirm Porter's conviction of Class A misdemeanor resisting law enforcement.

Affirmed.

RILEY, J., and NAJAM, J., concur.