

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);  
Ariz.R.Crim.P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 01/25/2011  
RUTH WILLINGHAM,  
ACTING CLERK  
BY: GH

STATE OF ARIZONA, ) 1 CA-CR 10-0039  
)  
Appellee, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
TIMOTHY LEE WINKLER, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-100686-001SE

The Honorable Edward O. Burke, Judge

**AFFIRMED**

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Terry Goddard, Attorney General Phoenix  
by Kent E. Cattani, Chief Counsel,  
Criminal Appeals/Capital Litigation Section  
and Joseph T. Maziarz, Assistant Attorney General  
Attorneys for Appellee

Maricopa County Public Defender Phoenix  
by Thomas Baird, Deputy Public Defender  
Attorneys for Appellant

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**I R V I N E**, Judge

¶1 Timothy Lee Winkler ("Winkler") appeals his conviction for resisting arrest. For the reasons that follow, we affirm the judgment of the trial court.

## FACTS AND PROCEDURAL HISTORY

¶12 We view the evidence in the light most favorable to sustaining the trial court's verdict and resolve all reasonable inferences against Winkler. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998). The following facts were elicited at trial.

¶13 On January 5, 2009, Winkler was stopped by Maricopa County Sherriff Deputy M. for speeding and driving in the HOV lane. When Winkler was stopped, he immediately exited his car and was yelling and waiving his hands "up in the air like he was very mad." Deputy M. ordered Winkler to return to his car and, after repeated orders, Winkler complied. Deputy M. ordered Winkler to remain in his car as they were on the freeway. Once Deputy M. returned to his patrol car to process Winkler's information, Winkler got out of his car and began to "aggressively" approach Deputy M.'s patrol car while yelling and screaming. Although Deputy M. again ordered Winkler to return to his car, Winkler refused. Deputy M. continued to order Winkler to return to his car, and Winkler eventually complied.

¶14 Because the routine traffic stop had escalated and was taking place on the freeway during rush hour, Deputy M. decided to detain Winkler. Deputy M. approached Winkler's vehicle, informed Winkler he was under arrest and requested he step out of his car. Instead of complying with Deputy M., Winkler assumed

a defensive position by putting his feet up. After repeated ignored commands to exit the car, Deputy M. reached inside the vehicle and grabbed Winkler's wrist. Winkler "wrenched back and pulled his arms back" and did not comply with Deputy M.'s order to step out of the car. Deputy M. was able to remove Winkler from the car and the pair "ended up on the ground." Winkler was on his stomach, had both his arms underneath him and was refusing to place his hands behind his back. Winkler used "counter force" to prevent Deputy M. from pulling Winkler's arms from underneath his chest to behind his back. Deputy M. eventually handcuffed Winkler and placed him in the back of his patrol car.

¶15 Winkler was charged with resisting arrest, a class 6 felony. A jury found him guilty as charged. Winkler timely appealed.

#### **DISCUSSION**

¶16 Winkler argues that the trial court erred when it denied his motion for acquittal, submitted pursuant to Arizona Rule of Criminal Procedure 20, because he did not use any force against Deputy M. Specifically, Winkler argues that the "counter force" he used while Deputy M. was effecting his arrest "was of no consequence [and] the act does not qualify as resisting arrest."

¶17 We review a trial court's denial of a Rule 20 motion for an abuse of discretion. *State v. Henry*, 205 Ariz. 229, 232, ¶ 11, 68 P.3d 455, 458 (App. 2003). The jury found Winkler guilty of resisting arrest, in violation of Arizona Revised Statutes ("A.R.S.") section 13-2508(A)(1) (2010).<sup>1</sup> Section 13-2508(A)(1) provides, in pertinent part, that a person commits resisting arrest by preventing a peace officer acting pursuant to his or her authority from effecting arrest by "[u]sing or threatening to use physical force against the peace officer or another."<sup>2</sup> The "physical force" element of the statute "does not require any particular type of physical conduct so long as that conduct qualifies as 'physical force against the peace officer or another.'" *State v. Lee*, 217 Ariz. 514, 517, ¶ 12, 176 P.3d 712, 715 (App. 2008) (quoting A.R.S. § 13-2508(A)(1)). Section 13-2508(A)(1) requires that the physical force exerted by the person being arrested is "intentionally preventing or attempting to prevent" the police officer from effecting the arrest.

¶18 Viewed in the light most favorable to sustaining the verdict, Winkler's conduct can reasonably be viewed as "intentionally preventing or attempting to prevent . . . a peace

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<sup>1</sup> Unless otherwise specified, we cite the current versions of the applicable statutes when no revisions material to this decision have since occurred.

<sup>2</sup> Because Winkler does not argue that he was unaware Deputy M. was a peace officer, we do not address that element of the statute. See A.R.S. § 13-2508(A).

officer . . . from effecting an arrest." A.R.S. § 13-2508(A). After Deputy M. told Winkler he was under arrest, Winkler assumed a defensive position while in his car and refused to get out of his car. To be convicted under A.R.S. § 13-2508(A)(1), a person must use "or threaten[] to use physical force against the peace officer or another." Once told he was under arrest, Winkler struggled with Deputy M. and tried to remain in his car when Deputy M. grabbed his wrist. Once Winkler was out of the car and on the ground, Winkler did not lie on the ground passively, which would have allowed Deputy M. to put him in handcuffs. Instead, Winkler exerted force or "counter force" in opposition to Deputy M.'s actions to place him in handcuffs. Winkler's actions during his arrest meet the requirements of A.R.S. § 13-2508(A)(1). See *Lee*, 217 Ariz. at 516-17, ¶ 11, 176 P.3d at 714-15 (finding jerking an arm away from officers and "physically resisting the placement of the handcuffs" while officers tried to effect an arrest was sufficient to meet the A.R.S. § 13-2508(A)(1) requirement).

¶19 Although Winkler attempts to analogize his arrest to the arrest in *State v. Womack*, 174 Ariz. 108, 847 P.2d 609 (App. 1992), we agree with the State that Winkler's reliance is misplaced. In *Womack*, the defendant fled on a motorcycle from a police officer who was attempting to pull him over. *Id.* at 110, 847 P.2d at 611. After the officer followed the defendant for a

number of miles, the defendant eventually pulled over and was taken into custody. *Id.* The *Womack* court distinguished avoiding and resisting arrest, and it concluded that the defendant's mere flight did not constitute resisting arrest. *Id.* at 114, 847 P.2d at 615. Unlike the defendant in *Womack*, Winkler did not flee, but instead exerted physical force or "counter force" to avoid being handcuffed by Deputy M. Additionally, there was absolutely no physical contact between the defendant and arresting officers in *Womack*, and it is undisputed in this case that Deputy M. and Winkler physically struggled before Winkler's arrest. *See id.* at 110, 847 P.2d at 611. Accordingly, *Womack* is inopposite.

**CONCLUSION**

¶10 Because Winkler's actions during his arrest met the requirements of A.R.S. § 13-2508(A)(1), we conclude the trial court did not err in denying his Rule 20 motion. We affirm the judgment of the trial court.

/s/  
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PATRICK IRVINE, Judge

CONCURRING:

/s/  
\_\_\_\_\_  
LAWRENCE F. WINTHROP, Presiding Judge

/s/  
\_\_\_\_\_  
PATRICIA K. NORRIS, Judge