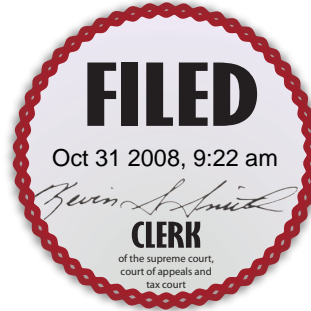


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL BATTS,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0805-CR-399
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara A. Collins, Judge
Cause No. 49F08-0711-CM-243670

October 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Michael Batts appeals his conviction for resisting law enforcement as a class A misdemeanor.¹ Batts raises one issue, which we revise and restate as whether the evidence is sufficient to sustain his conviction. We affirm.

The relevant facts follow. On November 14, 2007, Indianapolis Police Department Officer Chris Edwards was dispatched to a store on a report of a disturbance between an employee and his manager. Officer Edwards spoke to Mr. Maultsby, the manager of the store, and was about to leave when Batts pulled up in his car. Batts appeared to be angry and agitated and, after exiting his car, began shouting at Maultsby. When Officer Edwards approached Batts and Maultsby in his police cruiser, Batts jumped back into his car, threw it in reverse, and accelerated backwards, almost striking Officer Edwards's vehicle. Officer Edwards then turned on his emergency lights and approached Batts on foot.

Officer Edwards asked Batts to exit his car so that they could “find out what was going on.” Transcript at 7. Batts shouted that he was not going to get out and “aggressively” reached under his seat with his left hand. *Id.* at 8. Officer Edwards then opened Batts's car door, asked him to exit the car, took hold of his left arm, and escorted him to the police cruiser. Officer Edwards questioned Batts about the disturbance and asked him to calm down. Batts then reached into a pocket, and, concerned for his safety, Officer Edwards placed his hand over Batts's hand and asked him what he had in his

¹ Ind. Code § 35-44-3-3 (Supp. 2006).

pocket. Batts became agitated and tried to “jerk away” from Officer Edwards. Id. at 10. Officer Edwards grabbed Batts’s arm, and Batts again jerked away and attempted to shove Officer Edwards, who, in turn, ordered Batts to stop resisting. Officer Edwards and Indianapolis Police Department Officer Bryan Neal, who had also arrived on the scene, then tackled Batts, but Batts continued to struggle. Batts fought back, twisting and thrashing his arms and legs and attempting to strike the officers. The officers maced Batts twice and deployed a taser three times before successfully handcuffing him.

The State charged Batts with resisting law enforcement as a class A misdemeanor. After a bench trial, the trial court found Batts guilty as charged and sentenced him to 365 days with 364 days suspended to probation.

The issue is whether the evidence is sufficient to sustain Batts’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.

Indiana Code § 35-44-3-3(a)(1) provides that “[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, a Class A misdemeanor” Thus, to convict Batts of resisting law enforcement as a class A misdemeanor, the State needed to prove that Batts knowingly or intentionally forcibly resisted, obstructed, or interfered with Officer Edwards while the officer was lawfully engaged in the execution of his duties.

Batts argues that the evidence is insufficient because his actions “were merely instinctive to what he felt were [sic] an unjustified intrusion by the police.” Appellant’s Brief at 5. A person forcibly resists “when strong, powerful, violent means are used to evade a law enforcement official’s rightful exercise of his or her duties.” Guthrie v. State, 720 N.E.2d 7, 9 (Ind. Ct. App. 1999) (quoting Spangler v. State, 607 N.E.2d 720, 723 (Ind. 1993)), trans. denied. Mere passive resistance is not sufficient to sustain a conviction for resisting law enforcement. Id.

Here, when Officer Edwards asked Batts what he had in his pocket, Batts jerked away and attempted to shove Officer Edwards. After the officers tackled him, he twisted and writhed on the ground and, at one point, attempted to strike the officers. The officers were able to handcuff Batts only after macing him twice and deploying a taser three times. We conclude that there exists evidence of probative value from which a

reasonable trier of fact could find Batts guilty beyond a reasonable doubt of resisting law enforcement as a class A misdemeanor. See, e.g., Johnson v. State, 833 N.E.2d 516, 518-519 (Ind. Ct. App. 2005) (holding that defendant forcibly resisted police officers by turning away and pushing away with his shoulders as they attempted to search him, refusing to get into the transport vehicle, and stiffening up, thus requiring the officers to exert force to place him inside the transport vehicle).

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

Affirmed.

BAKER, C. J. and MATHIAS, J. concur