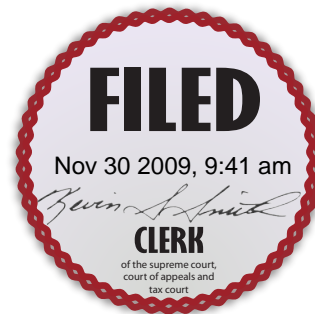


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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KENNETH FRANCE, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 49A02-0904-CR-357  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Barbara A. Collins, Judge  
The Honorable John J. Boyce, Commissioner  
Cause No. 49F08-0812-CM-276148

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**November 30, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Kenneth France appeals his convictions for resisting law enforcement as a Class A misdemeanor and public intoxication as a Class B misdemeanor. We affirm.

### **Issues**

France raises two issues, which we restate as whether the evidence is sufficient to sustain his convictions.

### **Facts**

On the evening of December 3, 2008, Officer T. Michael Wilson of the Indianapolis Metropolitan Police Department was typing a report in his vehicle in a fire station parking lot when he heard something behind his vehicle. Officer Wilson saw France riding a bicycle through the fire station parking lot. France was unable to ride the bicycle in a straight line and was weaving. As Officer Wilson was getting out of his vehicle, he heard breaking glass and saw France trying to retrieve a bag that he had dropped on the ground. The bag contained an alcoholic beverage in a glass bottle and a forty-ounce can of beer. Officer Wilson tried to have a conversation with France regarding France's failure to have a light on his bicycle as required by a Marion County ordinance, but France was "very hateful and belligerent" to Officer Wilson. Tr. p. 9. Officer Wilson noticed that France had red, bloodshot, and watery eyes, slurred speech, unsteady balance, and an odor of alcohol on his breath. Because the fire trucks come out of the fire station "very suddenly and unexpectedly," Officer Wilson advised France not to ride his bicycle in the parking lot, and France started to leave.

France then circled back toward Officer Wilson, yelled at him, and spit a “large glob of spit and snot” at Officer Wilson. Id. at 10. Officer Wilson sidestepped the “loogy” and grabbed France’s left bicep and jacket, causing him and the bicycle to stop. Id. at 12. Officer Wilson told France to get off the bicycle, but he refused. France “violently jerked his left hand across his body,” and Officer Wilson used a “straight arm bar” maneuver to pull France off his bicycle and onto the ground. Id. at 13. Officer Wilson told France to get on his stomach, but France refused and tucked his arms underneath his body. Officer Wilson then used two “distractionary knee strikes” to France’s midsection and was able to handcuff France. Id. at 14.

The State charged France with resisting law enforcement as a Class A misdemeanor and public intoxication as a Class B misdemeanor. After a bench trial, the trial court found France guilty as charged. He now appeals.

### **Analysis**

France argues that the evidence is insufficient to sustain his convictions. 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 conviction. Id.

The offense of resisting law enforcement as a Class A misdemeanor is governed by Indiana Code Section 35-44-3-3(a), which provides:

A person who knowingly or intentionally:

(1) 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 .

...

France argues that his conduct did not constitute forcible resistance. Our supreme court recently addressed a similar argument in Graham v. State, 903 N.E.2d 963 (Ind. 2009). In Graham, the court noted that the word “forcibly” modifies “resists, obstructs, or interferes” and that force is an element of the offense. 903 N.E.2d at 965 (citing Spangler v. State, 607 N.E.2d 720, 723 (Ind. 1993)). “[O]ne ‘forcibly resists’ when ‘strong, powerful, violent means are used to evade a law enforcement official’s rightful exercise of his or her duties.’” Id. (quoting Spangler, 607 N.E.2d at 723). The court held that “[t]he force involved need not rise to the level of mayhem.” Id. While “stiffening” one’s arms may constitute forcible resistance, Johnson v. State, 833 N.E.2d 516, 517 (Ind. Ct. App. 2005), merely refusing to present one’s arms for cuffing was insufficient to constitute forcible resistance. Graham, 903 N.E.2d at 966.

Here, Officer Wilson grabbed France's left bicep and jacket, causing him and the bicycle to stop. Officer Wilson told France to get off the bicycle, but he refused. France "violently jerked his left hand across his body," and Officer Wilson used a "straight arm bar" maneuver to pull France off his bicycle and onto the ground. Tr. p. 13. Officer Wilson told France to get on his stomach, but France refused and tucked his arms underneath his body. Officer Wilson then used two "distractionary knee strikes" to France's midsection and was able to handcuff France. Id. at 14.

France's "violent jerk[]" away from Officer Wilson is clearly more than passive resistance. Id. at 13. We conclude that the State presented sufficient evidence to show that France knowingly or intentionally forcibly resisted Officer Wilson while Officer Wilson was lawfully engaged in the execution of his duties. The evidence is sufficient to sustain France's conviction for resisting law enforcement as a Class A misdemeanor.

Next, France argues that the evidence is insufficient to sustain his conviction for public intoxication. The offense of public intoxication as a Class B misdemeanor is governed by Indiana Code Section 7.1-5-1-3, which provides: "It is a Class B misdemeanor for a person to be in a public place or a place of public resort in a state of intoxication caused by the person's use of alcohol or a controlled substance (as defined in IC 35-48-1-9)."

France first argues that he was not "creating a disturbance or bothering persons in a public place." Appellant's Br. p. 13. In support of this assertion, France relies in part on State v. Sevier, 117 Ind. 338, 340, 20 N.E. 245, 246-47 (1889), in which our supreme court stated: "The purpose of the law is to protect the public from the annoyances and

deleterious effects which may and do occur because of the presence of persons who are in an intoxicated condition.” However, the statute does not require a showing that France was creating a disturbance or bothering persons. Rather, the statute requires only a showing that France was intoxicated in a public place. The fire station parking lot is clearly a public place, and France makes no argument to the contrary.

France next argues that he was not intoxicated. However, the evidence presented at the trial demonstrated that France was weaving on his bicycle, he had red, bloodshot, and watery eyes, slurred speech, unsteady balance, and an odor of alcohol on his breath, and he was belligerent to Officer Wilson. This evidence is sufficient to show that France was intoxicated. See, e.g., Wright v. State, 772 N.E.2d 449, 460 (Ind. Ct. App. 2002) (holding the evidence was sufficient to show the defendant was intoxicated where he was verbally abusive to the special deputies, had red eyes, smelled strongly of alcohol, and was unsteady on his feet). We conclude that the State presented evidence sufficient to sustain France’s conviction for public intoxication.

### **Conclusion**

The evidence is sufficient to sustain France’s convictions for resisting law enforcement as a Class A misdemeanor and public intoxication as a Class B misdemeanor. We affirm.

Affirmed.

NAJAM, J., and KIRSCH, J., concur.