

## MEMORANDUM DECISION

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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Lonnie Garner, Jr.,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

December 7, 2021

Court of Appeals Case No.  
21A-CR-1152

Appeal from the Hamilton  
Superior Court

The Honorable William J. Hughes,  
Judge

Trial Court Cause No.  
29D03-2004-F6-2290

**Bradford, Chief Judge.**

## Case Summary

[1] In March of 2020, Westfield Police Officers Tyler Mitchell and Derek Baldrige responded to a dispatch call regarding a physical disturbance at Lonnie Garner's apartment. Garner was upset, belligerent, and yelling. Garner's girlfriend was screaming and crying inside the residence. Believing a crime may have occurred, the officers decided to detain Garner. However, Garner refused Officer Baldrige's orders, pulled his hands away, and lunged away from the officers. The officers grabbed Garner and he continued to pull his hands away until the officers were able to restrain him. Ultimately, the State charged Garner with Level 6 felony domestic battery and Class A misdemeanor resisting arrest. The State dismissed the domestic battery charge; however, the trial court convicted Garner of resisting law enforcement. On appeal, Garner argues that the evidence is insufficient to support his conviction for Class A misdemeanor resisting law enforcement. We affirm.

## Facts and Procedural History

[2] On March 31, 2020, Officers Mitchell and Baldrige responded to a physical disturbance at Garner's apartment. Upon arriving at Garner's residence, Officer Mitchell knocked and announced himself. Garner, upset and shouting, answered the door. When Officer Baldrige arrived shortly thereafter, Garner was upset, belligerent, and yelling at Officer Mitchell. The officers saw Garner's girlfriend, who had made the 911 call, at the top of the stairs. She was crying, screaming, and holding a baby. After talking with Garner's girlfriend, the officers believed Garner might have had committed a crime.

- [3] The officers decided to detain Garner. Officer Baldrige ordered Garner to step outside, turn around, and place his hands behind his back. Garner refused, pulled his hands away and to the front of his body, and moved towards the door. Officer Baldrige grabbed Garner’s hand and attempted to place it behind his back, but Garner pulled his hand away and lunged forward as if to flee. Both officers took hold of Garner, and he continued to pull away. The officers subsequently brought Garner to the ground and attempted to handcuff him. Despite Garner’s continued efforts to pull his hands away, the officers were able to handcuff him, place him in the police car, and take him to jail.
- [4] On April 2, 2020, the State charged Garner with Level 6 felony domestic battery and Class A misdemeanor resisting arrest. A month later, the State dismissed the domestic battery charge. Following a bench trial, the trial court convicted Garner of resisting law enforcement and sentenced him to two days in the Hamilton County jail, which he had already served, and ordered him to pay \$185.00 in court costs.

## Discussion and Decision

- [5] Garner appeals his conviction for Class A misdemeanor resisting law enforcement, alleging that the evidence is insufficient to support that conviction. When we review a sufficiency claim, we do not “reweigh the evidence or reassess the credibility of witnesses.” *Walker v. State*, 998 N.E.2d 724, 726 (Ind. 2013) (citing *Bailey v. State*, 979 N.E.2d 133, 135 (Ind. 2012)). Instead, we “must consider only the probative evidence and reasonable

inferences supporting the verdict.” *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). We view all the evidence, and all reasonable inferences drawn from it, in the light most favorable to the conviction. *Walker*, 998 N.E.2d at 726. If substantial evidence supports a reasonable fact-finder’s conclusion that the elements of the crime are proven beyond a reasonable doubt, we will affirm the decision. *Id.*

[6] A person resists law enforcement when he “knowingly or intentionally ... forcibly resists, obstructs, or interferes with a law enforcement officer ... while the officer is lawfully engaged in the execution of the officer’s duties.” *Ind. Code § 35-44.1-3-1(a)(1)*. Force is an essential element of the crime. *Walker*, 998 N.E.2d at 726. Forcibly resisting law enforcement occurs when one uses “strong, powerful, violent means ... 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). However, the “force involved need not rise to the level of mayhem.” *Graham v. State*, 903 N.E.963, 965 (Ind. 2009). Indeed, a defendant may satisfy “the element with even a modest exertion of strength, power, or violence.” *Walker*, 998 N.E.2d at 727.

[7] Our previous decisions have held that pulling one’s hands away from officers during an arrest constitutes resisting law enforcement. In *Lopez v. State*, 926 N.E.2d 1090, 1091 (Ind. Ct. App. 2010), Indianapolis police officers responded to a domestic disturbance at an apartment. While at the scene, the officers asked Lopez to stand to be handcuffed. *Id.* Lopez refused and “cross[ed] his arms in front of his chest.” *Id.* The officers grabbed Lopez but he “started to

pull away.” *Id.* The officers put Lopez on the ground and tried to bring his hands behind his back. *Id.* After struggling to get Lopez’s hands behind his back, the officers eventually restrained him. *Id.* The court found that the evidence sufficiently proved that Lopez forcibly resisted the officers’ execution of their duties. *Id.* at 1094.

[8] This case is legally indistinguishable from *Lopez*. Like Lopez, Garner repeatedly pulled away from the officers. After first being asked to place his hands behind his back, Garner “pulled away” from Officer Baldrige’s grasp and lunged forward as if “to possibly take off and run.” Tr. Vol. II p. 19. And once the officers got Garner to the ground, he continued to “pull his hands away” to prevent being handcuffed. Tr. Vol. II p. 20. Like Lopez’s conduct, Garner’s conduct sufficiently shows that he resisted law enforcement officers in the execution of their duties.

[9] While in some cases the resistance fails to rise to the level of forcibly resisting law enforcement, this is not one of those cases. For example, in *Graham*, officers commanded Graham to give them his hands. Graham refused but did not resist when officers handcuffed him. 903 N.E.2d at 965. The court acknowledged that “[w]hile even ‘stiffening’ one’s arms when an officer grabs hold to position them for cuffing would suffice [for resisting law enforcement], there is no fair inference here that such occurred.” *Id.* at 966. Here, Garner’s resistance goes further than simply not presenting his hands for cuffing.

[10] The evidence here, considered in a light most favorable to the conviction, is not ambiguous. Garner attempts to rely on our decision in *Berberena v. State*, 914 N.E.2d 780 (Ind. Ct. App. 2009), to suggest that his conviction is unsupported by the evidence because the officers' testimony is vague. In *Berberena*, the officer "did not testify, and there [was] no evidence ... that Berberena stiffened his arms or otherwise 'made threatening or violent actions.'" *Id.* at 782 (quoting *Ajabu v. State*, 704 N.E. 494, 496 (Ind. Ct. App. 1998)). Unlike that case, the record here is replete with officer testimony about Garner's repeated attempts to "forcibly pull away" from the officers. Tr. Vol. II p. 20. Further, Garner even acknowledged that he had resisted the officers.

[11] Because the officers' testimony supports a conclusion that Garner repeatedly attempted to pull away from the officers as they attempted to arrest him, the evidence sufficiently supports his conviction for resisting law enforcement.

[12] The judgment of the trial court is affirmed.

Robb, J., and Altice, J., concur