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**IN THE
COURT OF APPEALS OF INDIANA**

JAMAR THOMAS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0704-CR-212

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jose Salinas, Judge
Cause No. 49G17-0701-CM-15935

November 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Jamar Thomas appeals his conviction in a bench trial for resisting law enforcement, as a class A misdemeanor.¹

We reverse and remand.

ISSUE

Whether there is sufficient evidence to support the conviction.

FACTS

During the early morning of January 27, 2007, Ronnda Watson—the mother of Thomas’ child—was at an Indianapolis restaurant. Thomas telephoned Watson and told her that “he was coming up there to get [her]” and take her home. (Tr. 11). When Thomas arrived at the restaurant and approached Watson, she began running away from him because she “wasn’t ready to go home.” (Tr. 12). Watson ran into the restaurant’s parking lot, where Thomas began chasing her “around the car.” (Tr. 13). Thomas then “ran up the hood of the car, on top of the roof,” jumped off the car and forced Watson to the ground by striking her chest with his foot. (Tr. 14).

Wayne Shelton, an officer with the Indianapolis Metropolitan Police Department, was working off-duty security for the restaurant on January 27, 2007. Officer Shelton, who was utilizing his police vehicle and dressed in full uniform, observed Thomas chasing Watson through the parking lot. After Officer Shelton saw Thomas kick Watson, he drove his vehicle to where Thomas and Watson were located and observed Thomas

¹ Ind. Code § 35-44-3-3.

“grabbing [Watson] by her arms as she was on the ground and it appeared as if he was dragging her.” (Tr. 39). Officer Shelton exited his vehicle and ordered Thomas to “take his hands off of [Watson].” (Tr. 39). Thomas, who was “approximately ten feet from” Officer Shelton, “was looking at [Officer Shelton].” (Tr. 39). When Thomas did not immediately comply with Officer Shelton’s order, Officer Shelton again ordered Thomas to release Watson and “approached [Thomas] to grab him and [Thomas] pulled away from [Officer Shelton], dropping [Watson].” (Tr. 40). Officer Shelton then pulled out his taser gun and ordered Thomas to stop and get on the ground. Upon Officer Shelton’s order, Thomas “put his hands up immediately and then he got on the ground.” (Tr. 42).

The State charged Thomas with Count 1, domestic battery, as a class A misdemeanor; Count 2, battery, as a class A misdemeanor; and Count 3, resisting law enforcement, as a class A misdemeanor. Following a bench trial on March 19, 2007, the trial court found Thomas guilty of battery, as a class B misdemeanor; and resisting law enforcement, as a class A misdemeanor. The trial court imposed a sentence of 180 days with 168 days suspended to probation on the battery charge and 365 days with 353 days suspended to probation on the resisting law enforcement charge. The trial court ordered that the sentences be served concurrently.

DECISION

Thomas asserts that the evidence was insufficient to sustain his conviction for resisting law enforcement.

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder’s role, not that of

appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

Pursuant to Indiana Code section 35-44-3-3(a)(1), 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 his duties as an officer” commits resisting law enforcement. “‘Forcibly’ is a required element” of resisting law enforcement. *Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993). “Forcibly resists” means to use “strong, powerful, violent means” to evade a law enforcement official’s rightful exercise of his or her duties. *Id.* A defendant must do more than merely stand his ground to satisfy the requirement of force. *Id.* at 724. Rather, the evidence must establish that “strength, power, or violence” was directed toward a law enforcement official or there was a “movement or threatening gesture made in the direction of the official.” *Id.*

At trial, Officer Shelton testified that after he ordered Thomas to let go of Watson; he approached Thomas “to grab him and [Thomas] pulled away from” Officer Shelton. (Tr. 40). When asked to describe how Thomas pulled away from him, Officer Shelton testified that Thomas was holding Watson “by her underarms,” dropped Watson “and then he jerked back . . . and began to walk backwards with both of his fists clenched

down to his side looking eye to eye with [Officer Shelton].” (Tr. 40). Officer Shelton then testified that Thomas stopped and got on the ground once Officer Shelton pulled out his taser gun and ordered Thomas to stop.

Given the testimony at trial, we cannot say that Thomas used “strong, powerful, violent means” to evade Officer Shelton’s exercise of his duties. *See Spangler*, 607 N.E.2d at 723. Upon Officer Shelton’s second command to let Watson go, Thomas “dropped” her. (Tr. 40). Thomas then “jerked back” and began to walk backwards, with his arms at his sides and his fists clenched. There is no evidence that Thomas directed “strength, power, or violence” toward Officer Shelton or made a “movement or threatening gesture” in Officer Shelton’s direction. *See Spangler*, N.E.2d at 724. Accordingly, we find the evidence insufficient to support Thomas’ conviction for resisting law enforcement. We therefore reverse and remand to the trial court with instructions to vacate the conviction and sentence for resisting law enforcement.

Reversed and remanded.

MAY, J., and CRONE, J., concur.