

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Andrew W. Albert,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 30, 2021

Court of Appeals Case No.
20A-CR-2204

Appeal from the
Bartholomew Superior Court

The Honorable
Kathleen Tighe Coriden, Judge

Trial Court Cause No.
03D02-1906-CM-3632

Kirsch, Judge.

[1] Andrew W. Albert (“Albert”) was convicted after a bench trial of resisting law enforcement¹ as a Class A misdemeanor. He appeals his conviction and raises the following issue for our review: whether the evidence presented by the State was sufficient to support his conviction.

[2] We affirm.

Facts and Procedural History

[3] On June 19, 2019, Albert and his wife (“Wife”) got into an altercation, and Wife left the couple’s apartment and called the police to report that Albert had struck her. *Tr. Vol. 2* at 3-5, 10. Officers from the Columbus Police Department responded and met with Wife, and at that time, Officer John Morphew (“Officer Morphew”) noticed that Wife had injuries that he determined to be consistent with her report. *Id.* at 10. Officer Morphew and Officer Wesley Dodge (“Officer Dodge”) proceeded back to the couple’s apartment to speak with Albert, and Albert let them into the apartment. *Id.* at 10-11, 16. When speaking with Officer Morphew and Officer Dodge, Albert made statements which Officer Morphew understood as an admission, and Officer Morphew told Albert that he was under arrest. *Id.* at 11, 19. Officer Morphew instructed Albert to turn around and place his hands behind his back so that Officer Mayhew could put the handcuffs on Albert. *Id.* at 11.

¹ See Ind. Code § 35-44.1-3-1(a)(1).

[4] At that time, Officer Dodge grasped Albert to place handcuffs on him, and Albert “shook him off” and screamed at the officer. *Id.* at 17-18. As the officers attempted to get him handcuffed, Albert tensed his muscles in a manner to prevent Officer Dodge from getting the handcuffs on him. *Id.* at 11. Officer Morpew then informed Albert that if he did not comply with the officers’ instructions, Officer Morpew would fire his taser on Albert. *Id.* at 11-12, 13. After Albert still failed to comply, Officer Morpew drew his taser. *Id.* at 12, 19. Albert then complied and allowed Officer Dodge to place the handcuffs on him. *Id.* at 13, 19.

[5] On June 26, 2019, the State charged Albert with domestic battery as a Class A misdemeanor and resisting law enforcement as a Class A misdemeanor. *Appellant’s App. Vol. 2* at 10-11. A bench trial was held on October 15, 2020. *Id.* at 6-7. At the bench trial, Wife testified that the physical contact by Albert that led to her calling the police had been accidental, and at the conclusion of the bench trial, the trial court found Albert not guilty of domestic battery and guilty of resisting law enforcement. *Tr. Vol. 2* at 4, 22. The trial court sentenced Albert to one year, all suspended to probation. *Id.* at 27. Albert now appeals.

Discussion and Decision

[6] When we review the sufficiency of the evidence to support a conviction, we do not reweigh the evidence or assess the credibility of the witnesses. *Peppers v. State*, 152 N.E.3d 678, 682 (Ind. Ct. App. 2020). We consider only the evidence most favorable to the trial court’s ruling and the reasonable inferences

that can be drawn from that evidence. *Lock v. State*, 971 N.E.2d 71, 74 (Ind. 2012). We also consider conflicting evidence in the light most favorable to the trial court's ruling. *Oster v. State*, 992 N.E.2d 871, 875 (Ind. Ct. App. 2013), *trans. denied*. A conviction will be affirmed if there is substantial evidence of probative value that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Wolf v. State*, 76 N.E.3d 911, 915 (Ind. Ct. App. 2017).

[7] Albert argues that the evidence presented by the State was not sufficient to support his conviction for resisting law enforcement. He contends that the evidence presented did not prove that he forcibly resisted the officers' attempts to handcuff him. Albert specifically claims that Officer Morpew's testimony did not indicate that he put up a fight, pulled away, attempted to run, or in any way forcibly resisted efforts to handcuff him. He further asserts that Officer Morpew's testimony that Albert merely tensed his muscles was not sufficient to prove that he forcibly resisted.

[8] In order to prove the crime of resisting law enforcement as charged here, the State was required to prove beyond a reasonable doubt that Albert knowingly or intentionally forcibly resisted, obstructed, or interfered with a law enforcement officer lawfully engaged in the execution of the officer's duties. Ind. Code § 35-44.1-3-1(a)(1). A person forcibly resists a police officer when she uses strong, powerful, violent means to impede an officer in the lawful execution of his duties. *Walker v. State*, 998 N.E.2d 724, 727 (Ind. 2013). An overwhelming or extreme level of force is not required. *Id.* Rather, forcible resistance may be

satisfied with even a modest exertion of strength, power, or violence. *Id.* “[E]ven the ‘stiffening’ of one’s arms when an officer grabs hold to position them for cuffing would suffice.” *Graham v. State*, 903 N.E.2d 963, 966 (Ind. 2009). Our Supreme Court has “never held that actual physical contact between the defendant and the officer [is] required to sustain a conviction for resisting law enforcement.” *Walker*, 998 N.E.2d at 727.

[9] Here, at trial, contrary to his argument on appeal that the record only reflected that he tensed his muscles to avoid being handcuffed, Albert admitted that he shook Officer Dodge off of him when the officer grabbed Albert to place the handcuffs on him. *Tr. Vol. 2* at 18; *Appellant’s Br.* at 9-10. Pulling away from an officer’s grasp is a forcible resistance. *See New v. State*, 135 N.E.3d 619, 625 (Ind. Ct. App. 2019) (finding that sufficient evidence supported a forcible resistance where the defendant repeatedly disregarded officer’s attempts to lead her to the rear of the vehicle and pulled away from his grip). The evidence here also showed that, after shaking off Officer Dodge’s grasp, Albert screamed at the officer. Albert then tensed his muscles to hinder the officers from placing the handcuffs on him and refused to comply with oral commands from the officers until Officer Morphew drew his taser and threatened to use it on Albert. *Tr. Vol. 2* at 11-12. Based on the evidence that Albert shook off Officer Dodge’s grasp while shouting at the officers, tensed his muscles when the officers attempted to handcuff him, and ignored the officers’ commands, we conclude that a trier of fact could reasonably infer that Albert engaged in at least a modest exertion of strength to impede the officers in the execution of their

duties as police officers. Therefore, we find that the State presented sufficient evidence to support Albert's conviction for Class A misdemeanor resisting law enforcement, and, therefore, we affirm his conviction.

[10] Affirmed.

Altice, J., and Weissmann, J., concur.