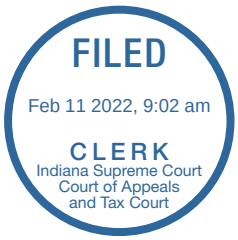
MEMORANDUM DECISION



ATTORNEY FOR APPELLANT

Thomas C. Allen
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

George P. Sherman
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Demetre Payton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 11, 2022

Court of Appeals Case No. 21A-CR-1547

Appeal from the Allen Superior Court

The Honorable Frances C. Gull, Judge

Trial Court Cause No. 02D05-2008-F5-000308

May, Judge.

[1] Demetre Payton appeals his conviction of Class A misdemeanor resisting law enforcement.[1] Payton asserts there was insufficient evidence from which the jury could conclude he resisted law enforcement. We affirm.

Facts and Procedural History

[2] On August 5, 2020, at approximately 1:30 a.m., Fort Wayne Police Officers Zachary Chapman and Roderick Waters pulled into the parking lot of a CVS pharmacy. The officers parked their patrol car adjacent to a white SUV with its engine running. The officers noticed the driver of the SUV "kind of slouched back and tried to not be seen by [Officer Chapman]." (Tr. Vol. 2 at 11.) The officers also noticed a backseat passenger, later identified as Payton, "was leaning forward in a crouched down position." (*Id.*) The officers were suspicious of this behavior and decided to "have a conversation with them" (*Id.* at 12.)

[3] As soon as the officers exited their vehicle and started walking toward the SUV, Payton "opened his door and hopped out of the backseat" (*id.* at 13), which the officers found suspicious. Upon approaching the vehicle, Officer Chapman noticed a box of red wine on the backseat and an open container with a red liquid in the center console. Officer Chapman arrested Sybron Pinkston, the driver, for violation of open container laws and operating a vehicle while

[1] Ind. Code § 35-44.1-3-1(a).

intoxicated. Officer Waters spoke with Payton, who identified himself using a false name and date of birth.

[4] When Officer Chapman learned from his interaction with Pinkston that the SUV was a rental, but Pinkston could not provide a rental agreement, Officer Chapman decided to tow the vehicle. Officer Winston, who had just arrived on the scene, began to perform an inventory search of the vehicle and found a handgun in the rear pocket of the driver's seat. (Tr. Vol. 3 at 23.) The officers concluded Payton would have had immediate access to the handgun before getting out of the SUV and decided to conduct a pat down to ensure he was not carrying any weapons.

[5] When Officer Chapman approached Payton to speak with him, Payton began backing away. Officer Chapman continued walking toward Payton, who only backed away faster. Officer Chapman then attempted to grab Payton's arm to prevent him from running, and Payton began flailing. Payton continued to struggle with Officer Chapman, even as the other two officers on the scene came to assist. Amid the scrum, the officers were pushed into a nearby car, but they were finally able to detain Payton. During the struggle, Officer Chapman sustained a small cut on his arm.

[6] On August 7, 2020, the State charged Payton with Level 5 felony carrying a handgun without a license, based on the handgun found in Pinkston's rental SUV, and Class A misdemeanor resisting law enforcement. On July 7-8, 2021, a jury trial was held. The jury returned verdicts of not guilty on the handgun

charge and guilty of Class A misdemeanor resisting law enforcement. On July 8, 2021, the trial court entered judgment accordingly and sentenced Payton to 365 days for Class A misdemeanor resisting law enforcement.

Discussion and Decision

[7] When reviewing sufficiency of the evidence to support a conviction, "this court does not reweigh the evidence or judge the credibility of the witnesses." *Clemons v. State*, 987 N.E.2d 92, 95 (Ind. Ct. App. 2013). "[W]e consider only the probative evidence and reasonable inferences that support the [trier of fact's] finding of guilt." *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). If there is conflicting evidence, we consider it in the light most favorable to the judgment. *Id.* The evidence does not need to overcome every reasonable hypothesis of innocence. *Id.* "Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense." *Clemons,* 987 N.E.2d at 95.

[8] Payton argues the State did not present sufficient evidence to support his conviction of Class A misdemeanor resisting law enforcement. Payton does not challenge any element of the offense. Instead, he contends the officers' testimony is not credible. To support this argument, Payton asks this court to consider: (1) a bystander's video of the incident; and (2) his acquittal of Level 5 felony carrying a handgun without a license. The bystander's video of the incident introduced at trial shows only a part of the events that happened that night. In particular, the video ends before a struggle ensues between Payton

and the officers. Thus, the partial video of the events does not contradict the officers' testimony. *See Love v. State,* 73 N.E.3d 693, 700 (Ind. 2017) ("In cases where the video evidence is somehow not clear or complete or is subject to different interpretations, we defer to the [fact-finder's] interpretation."). Additionally, the jury's acquittal of Payton on the Level 5 felony carrying a handgun without a license charge is irrelevant to his resisting law enforcement conviction, and the evidence supporting it. *See*, *e.g.*, *Hicks v. State,* 426 N.E.2d 411, 414 (Ind. 1981) ("The reason for allowing the jury to render verdicts, that are seemingly inconsistent, inheres within our system of jurisprudence. The jurors are the triers of fact, and in performing this function, they may attach whatever weight and credibility to the evidence as they believe is warranted.").

[9] Resisting law enforcement is committed when a person "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." Ind. Code § 35-44.1-3-1(a)(1). A person resists law enforcement when he uses "strong, powerful, or violent means" to impede an officer from executing his duties. *Walker v. State*, 998 N.E.2d 724, 727 (Ind. 2013). An extreme level of force is not required, and the force element may be satisfied with "even a modest exertion of strength, power, or violence." *Id.* Further, "the level of force does not need to rise to mayhem" and the stiffening of one's arms when an officer attempts to make an arrest is sufficient to prove force. *Graham v. State*, 903 N.E.2d 963, 965-66 (Ind. 2009).

[10] Here, when Officer Chapman approached Payton for a pat down, Payton began backing away and flailing. Officer Winston and Officer Waters came to Officer Chapman's aid due to Payton's resistance. Payton continued to violently struggle with the officers, which caused the officers to slam into a nearby vehicle. All three officers were finally able to detain Payton. As a result of this struggle, Officer Chapman sustained a small cut on his arm, which was bleeding. Payton knowingly and intentionally resisted the officers' attempt to conduct a pat down, and he resisted with such force that it took three officers to handcuff him. We accordingly hold the State presented sufficient evidence to support Payton's conviction of Class A misdemeanor resisting law enforcement. *See*, *e.g.*, *Johnson v. State*, 833 N.E.2d 516, 518 (Ind. Ct. App. 2005) (holding Johnson resisted law enforcement when he "used physical means to resist the officers by turning away and pushing away with his shoulders as they attempted to search him").

Conclusion

[11] The State presented sufficient evidence to prove Payton committed Class A misdemeanor resisting law enforcement. Accordingly, we affirm.

[12] Affirmed.

Brown, J., and Pyle, J., concur.