

## 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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### ATTORNEY FOR APPELLANT

Janet Lynn Wheeler  
Hoover Hull Turner LLP  
Indianapolis, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
Samuel J. Dayton  
Deputy Attorney General  
Indianapolis, Indiana  
Alexa Rojas  
Certified Legal Intern  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Kevin Shawn Dyer,  
*Appellant-Defendant,*

*v.*

State of Indiana,  
*Appellee-Plaintiff.*

September 20, 2022

Court of Appeals Case No.  
22A-CR-1046

Appeal from the Marshall  
Superior Court

The Honorable Dean A. Colvin,  
Judge

Trial Court Cause No.  
50D02-2012-CM-1010

**Bradford, Chief Judge.**

## Case Summary

[1] In November of 2020, officers attempting to arrest Kevin Dyer located him inside his father’s home. When found inside, Dyer lunged at one of the officers and forcibly resisted attempts to handcuff him for approximately thirty to sixty seconds. The State charged Dyer with Class A misdemeanor resisting law enforcement, and, following a bench trial, the trial court found him guilty as charged and sentenced him to ninety days of incarceration. Dyer contends that the State produced insufficient evidence to sustain his conviction. Because we disagree, we affirm.

## Facts and Procedural History

[2] On November 29, 2020, officers with the Marshall County Sheriff’s Department received information that Dyer was in his father’s home in Lapaz and that he was the subject of an active arrest warrant issued by Lake County. Deputies Richard Ayala and Blake Bennet, both in full uniform, arrived at the residence, and Deputy Ayala saw Dyer through a window sitting in a chair, at which point he fled but remained in the residence. Deputy Bennet entered and found Dyer hiding behind a door, at which point Dyer “lunged forward” at Deputy Bennet, who “grabbed [Dyer’s] coat” and placed him prone on a bed. Tr. Vol. II p. 26. By this time, a Deputy Wozniak had arrived in the room, and, as the deputies, one on each arm, attempted to handcuff Dyer, they continuously told him to place his hands behind his back while he “kept on putting his hands back in front of him” and yelling obscenities. Tr. Vol. II p. 26. Deputy Ayala and Sergeant Matthew Brown eventually entered the room,

and the four officers managed to handcuff Dyer. All told, it took the officers approximately thirty to sixty seconds to handcuff Dyer. The State charged Dyer with Class A misdemeanor resisting law enforcement, and his bench trial was held on April 7, 2022, after which the trial court found him guilty as charged and sentenced him to ninety days of incarceration.

## Discussion and Decision

- [3] When evaluating a challenge to the sufficiency of the evidence to support a conviction, we do not “reweigh the evidence or judge the credibility of the witnesses,” nor do we invade the factfinder’s “exclusive province to weigh conflicting evidence.” *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001). Rather, a conviction will be affirmed unless “no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Jenkins v. State*, 726 N.E.2d 268, 270 (Ind. 2000). The evidence need not exclude every reasonable hypothesis of innocence, but instead, “the evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” *Pickens v. State*, 751 N.E.2d 331, 334 (Ind. Ct. App. 2001). When we are confronted with conflicting evidence, we must consider it “most favorably to the [factfinder’s] ruling.” *Wright v. State*, 828 N.E.2d 904, 906 (Ind. 2005).
- [4] To prove that Dyer committed resisting law enforcement, the State was required to show that he knowingly or intentionally forcibly resisted, obstructed, or interfered with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of his duties. Ind. Code § 35-44.1-3-1(a)(1). A person forcibly resists arrest “when strong,

powerful, violent means are used 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). Even a modest level of force is sufficient establish that resistance was forcible, *Graham v. State*, 903 N.E.2d 963, 966 (Ind. 2009), and a threatening gesture or move toward an officer is considered forcibly resisting. *Walker v. State*, 998 N.E.2d 724, 727 (Ind. 2013) (citing *Price v. State*, 622 N.E.2d 954, 963 n.14 (Ind. 1993)). The mere act of passively pulling or turning from an officer, however, is not forcibly resisting. *K.W. v. State*, 984 N.E.2d 610, 613 (Ind. 2013).

[5] We have little trouble concluding that the State produced sufficient evidence to convict Dyer of resisting law enforcement. First, Dyer's conviction for resisting law enforcement can be sustained entirely by testimony that he "lunged" at Deputy Bennett, evidence specifically noted by the trial court but unaddressed by Dyer in his Brief of Appellant.<sup>1</sup> Tr. Vol. II p. 43. Lunging at officers would seem to easily qualify as a violent act pursuant to Indiana Supreme Court precedent. In *Price*, the Court noted that "an individual who directs strength, power or violence towards police officers *or who makes a threatening gesture or movement in their direction*, may properly be charged with [forcibly resisting law enforcement.]" 622 N.E.2d 954 at 963 n.14 (emphasis added). Evidence of physical contact between Dyer and Deputy Bennett was unnecessary because

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<sup>1</sup> In his Reply Brief, Dyer does argue that evidence of lunging is insufficient to sustain his conviction. It is well-settled, however, that "[a]n issue not raised in an appellant's brief may not be raised for the first time in a reply brief." *Chupp v. State*, 830 N.E.2d 119, 126 (Ind. Ct. App. 2005).

Dyer made a threatening gesture using force when he lunged at him, which is sufficient to establish forcible resistance. *See id.*

[6] Moreover, Dyer's repeated attempts to thwart the officers' attempts to handcuff him for between thirty and sixty seconds went beyond mere passive resistance. The trial court heard evidence that Dyer continued to put his hands under his body, despite officers (one on each of Dyer's arms) attempting to "grab" and gain control of them while continuously telling him to put them behind his back. Tr. Vol. II p. 30. It is well-settled that a person forcibly resists arrest when he yanks and moves his arms away from officers to prevent being handcuffed by those officers. *See, e.g., New v. State*, 135 N.E.3d 619, 625 (Ind. Ct. App. 2019) (concluding that evidence was sufficient to support conviction for resisting law enforcement when "New began struggling to an extent that another officer had to step in to assist" when an officer attempted to handcuff her).

[7] The cases on which Dyer relies are readily distinguishable, as they all involve persons who did not use force against the officers. *See Graham*, 903 N.E.2d at 966 (merely refusing to present one's arms for cuffing); *Spangler*, 607 N.E.2d at 724 (simply refusing service of process and walking away); *K.W.*, 984 N.E.2d at 613 (merely stepping away without flailing his arms or making any threatening gestures); *A.C. v. State*, 929 N.E.2d 907, 911 (Ind. Ct. App. 2010) (the juvenile merely "leaned away" from an officer); and *Ajabu v. State*, 704 N.E.2d 494, 495 (Ind. Ct. App. 1998) (defendant only twisted and turned "a little bit"). Here, however, Dyer lunged at an officer and then repeatedly pulled his arms away

from officers attempting to handcuff him for up to a minute, a far more active interference with the lawful execution of their duties than simply walking away, twisting and turning a little bit, or leaning away. The cases cited by Dyer do not help him, and, in the end, render his argument nothing more than an invitation to reweigh the evidence, which we will not do.

[8] We affirm the judgment of the trial court.

Riley, J., and Pyle, J., concur.