

MEMORANDUM DECISION

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ATTORNEYS FOR APPELLANT

Valerie K. Boots
Marion County Public Defender Agency
Indianapolis, Indiana

Timothy J. Burns
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Daylon L. Welliver
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Daryl Lamar Dale,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 8, 2023

Court of Appeals Case No.
22A-CR-1766

Appeal from the
Marion Superior Court

The Honorable
Elizabeth A. Christ, Judge

Trial Court Case No.
49D24-2112-CM-37034

Memorandum Decision by Senior Judge Shepard
Chief Judge Altice and Judge Mathias concur.

Shepard, Senior Judge.

- [1] Daryl Dale appeals his convictions of criminal trespass¹ and resisting law enforcement,² both Class A misdemeanors, contending the State's evidence was not sufficient. Concluding the evidence was sufficient to support both convictions, we affirm.

Facts and Procedural History

- [2] In November 2021, Dale was at Eskenazi Hospital for some testing, after which he waited for the hospital pharmacy to fill his prescription. During that time, Officer Thomas, a hospital security officer, received a call about a disturbance due to a visitor failing to wear a face mask. Officer Thomas, who was in his issued uniform, identified Dale, stopped him just outside the hospital pharmacy, and offered him a proper mask, but Dale responded with a refusal and obscenities. Dale then put on his own cloth mask. When Officer Thomas advised Dale that the hospital required everyone to wear a surgical mask, Dale cursed at him. Dale's loud exchange with Officer Thomas caused staff and visitors in the area to stop and watch. Officer Thomas repeatedly asked Dale to leave the hospital, but Dale refused and again responded with obscenities.

¹ Ind. Code § 35-43-2-2 (2021).

² Ind. Code § 35-44.1-3-1 (2021).

[3] A second security officer, Officer Herrington, had been inside the pharmacy and stepped over to assist Officer Thomas. Officer Herrington told Dale that if he had been asked to leave, he needed to leave. Dale responded with a refusal and more obscenities and lunged at Officer Thomas. Officer Herrington then grabbed Dale's wrist to handcuff him, but Dale pulled away from the officer's grasp "with power and force" and reached for Officer Herrington's taser. Tr. Vol. 2, p. 34. Herrington used a "single arm bar" and, with Officer Thomas' help, was able to restrain Dale. *Id.*

[4] As Officer Herrington escorted Dale to a different area of the hospital, Dale continued to yell and scream and cause a disturbance. The officer testified that, although Dale was told to stop resisting, he continued trying to "turn around on" Officer Herrington, which is an officer safety hazard, flailing, and moving his arms and body "with power and force." *Id.* at 35. Once they reached the holding room, Officer Herrington told Dale to separate his feet so the officers could search him, but Dale would not comply and continued to "try to turn" on the officers. *Id.* At one point when the officers again advised Dale to stop resisting, he threatened to "beat [their] ass[es]." *Id.* The officers were eventually able to search Dale adequately enough to place him in a holding cell. While shackled to the bench in the holding cell, Dale was able to maneuver his cuffed hands from behind his back to in front of him. Officer Herrington then warned Dale that he would be placed in a restraint chair if he did not return his hands to behind his back. Dale responded that he was not going to do that and

hit his head against the cinderblock wall several times. The officers placed him in a restraint chair at that time.

- [5] The State charged Dale with criminal trespass, resisting law enforcement, and disorderly conduct, a Class B misdemeanor. Following a bench trial, Dale was found guilty of criminal trespass and resisting.

Issue

- [6] Dale presents one issue for our review: whether there is sufficient evidence to support his convictions.

Discussion and Decision

A. Standard of Review

- [7] In reviewing challenges to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of the witnesses. *Sandleben v. State*, 29 N.E.3d 126 (Ind. Ct. App. 2015) (citing *Brasher v. State*, 746 N.E.2d 71, 72 (Ind. 2001)), *trans. denied*. Instead, we consider only the evidence most favorable to the verdict and any reasonable inferences drawn therefrom. *Id.* If there is substantial evidence of probative value from which a reasonable factfinder could have found the defendant guilty beyond a reasonable doubt, the verdict will not be disturbed. *Labarr v. State*, 36 N.E.3d 501 (Ind. Ct. App. 2015) (citing *McClellan v. State*, 13 N.E.3d 546, 548 (Ind. Ct. App. 2014), *trans. denied*).

B. Criminal Trespass

- [8] To obtain a conviction for criminal trespass, the State must have proved beyond a reasonable doubt that (1) Dale (2) not having a contractual interest in the property (3) did knowingly (4) refuse to leave the property of Eskenazi Hospital after having been asked to leave by Eskenazi Hospital or its agent. *See* Appellant's App. Vol. II, p. 17; *see also* Ind. Code § 35-43-2-2(b)(2). Here, Dale challenges the State's evidence only as to the element of contractual interest. Specifically, Dale claims he had a contractual interest in being at the hospital because he was receiving medical and pharmaceutical services there.
- [9] A contractual interest, as that term is used in the criminal trespass statute, refers to "a right, title, or legal share of real property arising out of a binding agreement between two or more parties." *Lyles v. State*, 970 N.E.2d 140, 143 n.2 (Ind. 2012). "In proving the lack of a contractual interest, the State need not 'disprove every conceivable contractual interest' that a defendant might have obtained in the real property at issue." *Id.* at 143 (quoting *Fleck v. State*, 508 N.E.2d 539, 541 (Ind. 1987)). "[S]ome contractual interests need not be disproven because they do not create any *reasonable* doubt that a defendant lacks a contractual interest in the property. For this reason, the State satisfies its burden when it disproves those contractual interests that are reasonably apparent from the context and circumstances under which the trespass is alleged to have occurred." *Lyles*, 970 N.E.2d at 143.

- [10] The evidence at trial showed that Dale was neither an owner nor an employee of the hospital but rather was a visitor/patient of the facility. This evidence refutes any of the most reasonably apparent sources from which Dale might claim a contractual interest in the hospital. *See id.* (finding that one who was neither owner nor employee of bank but was bank account holder did not have contractual interest in bank's real property).
- [11] Moreover, even assuming, as Dale alleges, his status as a patient of the hospital could give him any contractual interest in the hospital building, that interest is not unlimited. A party with a limited right to come upon certain real property, may lose this right based on his behavior. In other words, disruptive behavior may terminate a limited contractual interest. *See, e.g., Taylor v. State*, 836 N.E.2d 1024 (Ind. Ct. App. 2005) (where student roamed building for hours after his classes ended, had been told to wait for bus in front entry, and then refused to leave school premises, we noted general rule that if student has contractual interest in school property, that interest is not unlimited and can be violated by student's conduct), *trans. denied*.
- [12] Thus, the State presented sufficient evidence that Dale had no contractual interest in the hospital premises and that he refused to leave after being asked to do so by Officers Thomas and Herrington, who were agents of the hospital. And, even if Dale had some limited right to be on the hospital premises, his disruptive behavior terminated that limited right.

C. Resisting Law Enforcement

[13] In order to obtain a conviction for resisting law enforcement, the State must have proved beyond a reasonable doubt that (1) Dale (2) knowingly (3) forcibly resisted, obstructed, or interfered (4) with Officer Herrington (5) while he was lawfully engaged in his duties. *See* Appellant’s App. Vol. II, p. 17; *see also* Ind. Code § 35-44.1-3-1(a)(1). Dale argues the State failed to prove that his resistance was forcible and that Officer Herrington was lawfully executing his duties at the time.

[14] Our Supreme Court has summarized what constitutes forcible resistance:

[A] person “forcibly” resists, obstructs, or interferes with a police officer when he or she uses strong, powerful, violent means to impede an officer in the lawful execution of his or her duties. But this should not be understood as requiring an overwhelming or extreme level of force. The element may be satisfied with even a modest exertion of strength, power, or violence.

Walker v. State, 998 N.E.2d 724, 727 (Ind. 2013). The Court acknowledged these types of cases are necessarily fact-sensitive and stated it remains unconvinced that there needs to be a strict bright-line test that is any more definitive than the language already in use by our case law. *Id.*

[15] Here, Officer Herrington testified that Dale pulled away from his grasp and reached for his taser. Once detained, Dale continually flailed his arms, forcefully moved his body and arms about, tried to turn around (posing a safety risk), refused to be searched, and threatened the officers with bodily harm. We

believe this evidence is more than sufficient to establish forcible resistance under our Supreme Court's guidelines. *See, e.g., Glenn v. State*, 999 N.E.2d 859 (Ind. Ct. App. 2013) (concluding that feet-dragging and multiple attempts to pull away from officer constituted forcible resistance).

[16] Dale also claims that Officer Herrington was not lawfully engaged in his duties when Dale resisted arrest. Specifically, Dale asserts that Officer Herrington grabbed his arm and tried to handcuff him without first investigating whether Dale had a right to be in the hospital, and, as a result, Dale "reacted and the officers caused this encounter to escalate." Appellant's Br. p. 15.

[17] The evidence at trial showed that Officers Thomas and Herrington are certified law enforcement officers through the Marion County Sheriff's Office and are employed as security officers at Eskenazi Hospital. When Officer Thomas attempted to enforce a hospital rule with Dale, Dale became belligerent and refused. Officer Herrington saw Dale arguing with Officer Thomas and stepped in to assist Officer Thomas, attempting to grasp Dale's wrist only after Dale lunged at Officer Thomas. Dale does not dispute that Officer Herrington was employed by the hospital or that he was assisting a fellow officer in enforcing hospital rules as part of his duties, and he has cited to no authority to convince us that Officer Herrington acted unlawfully. Instead, his argument is simply an invitation to reweigh the evidence, which we may not do. *See Sandleben*, 29 N.E.3d 126. Thus, Dale's claim that Officer Herrington was not lawfully engaged in his duties fails.

Conclusion

[18] We conclude the evidence was sufficient to support both convictions.

[19] Affirmed.

Altice, C.J., and Mathias, J., concur.