

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

James A. Williams,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

April 20, 2022

Court of Appeals Case No.
21A-CR-2299

Appeal from the
Marion Superior Court

The Honorable
David Certo, Judge

The Honorable
David Hooper, Magistrate

Trial Court Cause No.
49D19-2002-CM-4591

Vaidik, Judge.

Case Summary

- [1] James A. Williams appeals his conviction for Class A misdemeanor resisting law enforcement, arguing the evidence is insufficient to support it. We affirm.

Facts and Procedural History

- [2] In the early morning hours of February 2, 2020, Indianapolis Metropolitan Police Department officers were dispatched to 9th Street on a report of a man passed out in a car. When Officers Austin Kirby and Mitchell Hubner arrived on the scene, they looked in the car, but no one was inside. The car owner, Williams, was standing on a nearby porch and approached the officers to see what was going on. The officers told Williams his car was parked the wrong direction and they were ticketing him for illegally parking. *See* Tr. pp. 86-87 (Williams admitting his car was illegally parked). Williams asked if he could move his car, but the officers, who suspected Williams had been drinking, told him no and that his car would be towed. Williams asked if he could call a friend to move his car. The officers agreed, and Williams called his neighbor, who said he would be there in ten to fifteen minutes.
- [3] When the tow truck arrived shortly before Williams's friend, Williams "got in the way of the wrecker driver" and tried "to stop the wrecker driver from loading [his] car." *Id.* at 60. The officers told Williams that if he didn't get out of the way, he would be arrested. When Williams didn't get out of the way, Officer Hubner tried to handcuff him. Williams, however, "spun around," got

in a “fighting stance,” and “balled up” his fists. *Id.* at 55. Both officers grabbed Williams and tried to handcuff him, but he “attempted to pull away” again. *Id.* at 56. The officers told Williams to stop resisting, but he “kept trying to pull away” from them. *Id.* The officers then “use[d] force to place him on the ground and into handcuffs.” *Id.*

[4] The State charged Williams with Class A misdemeanor resisting law enforcement.¹ At the bench trial, defense counsel argued Williams did not forcibly resist, but even if he did, the officers were not lawfully engaged in the execution of their duties. Defense counsel claimed the officers should have allowed Williams’s friend to move the car under IMPD General Order 7.3:

G. When towing under the authority of the community caretaking function, **the vehicle must be released by the contract wrecker, even if hoisted or attached to the wrecker, when:**

1. The owner of the vehicle is on scene and is in possession of a valid driver’s license;

2. The owner of the vehicle is arrested or otherwise incapacitated but authorizes the release of the vehicle to another, properly licensed, person on the scene; or

¹ The State also charged Williams with Class B misdemeanor public intoxication, but the trial court granted Williams’s motion to dismiss this charge.

3. The owner of the vehicle arrives on scene and authorizes the release of the vehicle to another, properly licensed, person on the scene.

IMPD General Order 7.3.III.G, <https://www.indy.gov/activity/police-administration> (“General Orders”) [<https://perma.cc/8YNY-8JX4>] p. 451 (emphases added). The trial court found Williams forcibly resisted and that although the officers “did not follow” IMPD General Order 7.3 (and that it was “questionable” whether the arrest was “good”), Williams could not resist an arrest even if it was unlawful. Tr. pp. 90, 97. The court therefore found Williams guilty as charged.

[5] Williams now appeals.

Discussion and Decision

[6] Williams contends the evidence is insufficient to support his conviction. When reviewing such claims, we neither reweigh the evidence nor judge the credibility of witnesses. *Willis v. State*, 27 N.E.3d 1065, 1066 (Ind. 2015). We will only consider the evidence supporting the judgment and any reasonable inferences that can be drawn from the evidence. *Id.* A conviction will be affirmed if there is substantial evidence of probative value to support each element of the offense such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

[7] To convict Williams of resisting law enforcement as charged here, the State had to prove he knowingly or intentionally forcibly resisted, obstructed, or

interfered with the officers while they were lawfully engaged in the execution of their duties. Ind. Code § 35-44.1-3-1(a)(1). Williams first argues the evidence is insufficient to prove he forcibly resisted. 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; the force element may be satisfied by “even a modest exertion of strength, power, or violence,” such as the stiffening of one’s arms when being handcuffed. *Id.* In addition, “actual physical contact” is not required; a threatening gesture in the officer’s direction can be enough. *Id.*

[8] Here, when Officer Hubner tried to handcuff Williams, Williams “spun around,” got in a “fighting stance,” and “balled up” his fists. Both officers grabbed Williams and tried to handcuff him, but Williams pulled away. The officers told Williams to stop resisting, but he kept pulling away, requiring the officers to use force to place him on the ground and into handcuffs. This evidence supports the trial court’s finding Williams forcibly resisted.

[9] Williams next argues that even if he forcibly resisted, the evidence is insufficient to prove the officers were lawfully engaged in the execution of their duties because they acted contrary to IMPD General Order 7.3. We first note Williams cites no authority suggesting that an officer’s violation of a departmental policy means the officer was not lawfully engaged in the execution of his duties for purposes of the resisting statute. In addition, the general rule is that a citizen cannot resist a peaceful arrest by a police officer, even if the arrest is unlawful. *Shoultz v. State*, 735 N.E.2d 818, 823 (Ind. Ct.

App. 2000), *reh'g denied, trans. denied*; see also *Row v. Holt*, 864 N.E.2d 1011, 1017 (Ind. 2007) (Indiana Supreme Court recognizing the general rule set forth in *Shoultz*); *Woodson v. State*, 123 N.E.3d 175, 178 (Ind. Ct. App. 2019).² As this Court has explained, allowing a citizen to resist an unlawful yet peaceful arrest would encourage rather than inhibit violence during arrests. *Dora v. State*, 783 N.E.2d 322, 327 (Ind. Ct. App. 2003) (holding the lawfulness of an arrest should be decided by courts and not by emotional participants), *trans. denied*. Even assuming the officers unlawfully arrested Williams, Williams was prohibited from resisting the arrest simply because he thought it was unlawful. The evidence is sufficient to support Williams's conviction.

[10] Affirmed.

Crone, J., and Altice, J., concur.

² This rule does not apply when an officer uses constitutionally excessive force in effecting an arrest, which includes unlawfully entering a home. *Love v. State*, 73 N.E.3d 693, 697 (Ind. 2017) (“An officer is not lawfully engaged in the execution of his duties when he uses constitutionally excessive force.”); *Alspach v. State*, 755 N.E.2d 209, 211 (Ind. Ct. App. 2001) (“[A] greater privilege exists to resist an unlawful entry into private premises than to resist an unlawful arrest in a public place.”), *trans. denied*. Williams does not argue excessive force on appeal.