MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Marlin D. Adams,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 9, 2022

Court of Appeals Case No. 21A-CR-2332

Appeal from the Allen Superior Court

The Honorable John Bohdan, Magistrate

Trial Court Cause No. 02D04-2011-CM-4016

Bailey, Judge.

Case Summary

[1] Marlin D. Adams was convicted of (1) public intoxication, as a Class B misdemeanor,[1] and (2) resisting law enforcement, as a Class A misdemeanor.[2] Adams challenges the sufficiency of the evidence supporting his convictions.

[2] As to public intoxication, Adams argues that there is insufficient evidence of a breach of the peace or an imminent danger of a breach. As to resisting law enforcement, Adams admits that he resisted arrest. However, Adams argues that he was improperly convicted because the officers used excessive force.

[3] We affirm.

Facts and Procedural History

[4] One afternoon in November 2020, Officer Lance Wilker of the Fort Wayne Police Department was dispatched to a residential area. Reportedly, there was a black male—potentially mentally ill—yelling at houses and children. When Officer Wilker responded to the call, he saw a woman tightly clutching a child. A group of people pointed down an alley, where Officer Wilker saw someone wearing clothing fitting the reported description. Concerned about the person, Officer Wilker approached him. The person was later identified as Adams.

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[1] Ind. Code § 7.1-5-1-3(a).

[2] I.C. § 35.44.1-3-1(1).

[5] Officer Wilker told Adams he was "coming to check" on him and "make sure [he's] okay." Tr. Vol. 2 at 105. Adams became "[v]ery aggressive by yelling" at Officer Wilker. *Id.* at 104. Officer Wilker smelled a "heavy odor of alcohol" emanating from Adams. *Id.* at 104. Officer Wilker also noticed that Adams had bloodshot, watery eyes and "his balance was a little off[.]" *Id.* at 105.

[6] Officer Wilker requested immediate backup assistance "due to the situation being tense, uncertain and rapidly evolving." *Id.* Specifically, Officer Wilker was concerned about the "level of aggression" Adams exhibited after Officer Wilker had "explained . . . that [he] was there to help[.]" *Id.* Officer Wilker "didn't know where it was going to go" and "felt more comfortable with another officer getting there a little bit more quickly." *Id.* Officer Wilker asked Adams for his identification. Adams at first refused to provide identification.

[7] When a backup officer arrived by vehicle, Adams "took off at a very fast pace towards" the vehicle. *Id.* at 106. Based on that behavior, Officer Wilker pulled out his taser in case he might need it. Officer Wilker also used his radio to inform the arriving officer that there was someone "running up to him[.]" *Id.* When the arriving officer got out of the vehicle, Adams stopped running and began to yell at the officer. A third officer eventually responded to the scene.

[8] When the third officer arrived, the officers attempted to arrest Adams for public intoxication. Officer Wilker did not inform Adams that he was under arrest. Officer Wilker did not do so because he "did not have time due to [Adams's] level of aggression" and because "there was so much going on[.]" *Id.* at 107.

[9] Officer Wilker tried to place handcuffs on Adams and asked him "numerous times" to comply. *Id.* at 108. Adams refused to comply, "tensing up his arm" and "pulling away[.]" *Id.* To place handcuffs on Adams, it took the efforts of three officers, which Officer Wilker attributed to Adams's "state of aggression." *Id.* Amid the struggle, Adams "kept yelling that he's a Marine, a devil dog." *Id.* at 109. One officer "put [his] hands on [Adams's] shoulders just to calm him down" and so other officers "could assist in putting [the] handcuffs on[.]" *Id.* at 127. The officer believed that if Adams "tried to do anything aggressive" this positioning would allow the officers to "take him into control a lot better." *Id*. The other two officers applied force to "get [Adams's] arms behind his back to get him placed into handcuffs." *Id.* at 108. After handcuffing Adams, law enforcement searched Adams's person and found an alcoholic beverage up one sleeve. Adams was also carrying a bag that contained alcoholic beverages.

[10] The officers decided to "play[] it safe" by having two officers escort Adams to a police vehicle. *Id.* at 110. While walking to the vehicle, Adams "became dead weight," essentially "dropp[ing] all of his weight causing [the officers] to carry him[.]" *Id.* at 109. Once at the vehicle, Adams "used the [vehicle's] frame and opening to prevent [the officers] from getting [Adams] inside[.]" *Id.* As Officer Wilker would later explain, Adams was "[f]ighting us, kicking, not wanting to go in, preventing us from shutting the doors and everything." *Id.* at 110.

[11] The State charged Adams with public intoxication, as a Class B misdemeanor, and resisting law enforcement, as a Class A misdemeanor. Adams was tried by

a jury and found guilty as charged. The trial court then entered judgment and imposed an aggregate sentence of 365 days in jail with 275 days suspended.

[12] Adams appeals.

Discussion and Decision

Standard of Review

[13] "A person may be convicted of an offense only if his guilt is proved beyond a reasonable doubt." I.C. § 35-41-4-1(a). When reviewing a sufficiency challenge, we do not reweigh evidence or reassess witness credibility. *Cardosi v. State*, 128 N.E.3d 1277, 1283 (Ind. 2019). We "consider only the evidence most favorable to the judgment together with all reasonable inferences that may be drawn from the evidence." *Id.* (quoting *McCallister v. State*, 91 N.E.3d 554, 558 (Ind. 2018)). If substantial evidence supports the judgment, we will affirm. *Id.*

Public Intoxication

[14] As charged, Adams could be convicted of public intoxication only upon sufficient evidence that, while intoxicated by alcohol in a public place, he "breach[ed] the peace" or was "in imminent danger of breaching the peace[.]" I.C. § 7.1-5-1-3(a). On appeal, Adams does not dispute that he was intoxicated by alcohol in a public place. Rather, he focuses on whether there is sufficient evidence that he breached the peace or was in imminent danger of doing so.

[15] As this Court has observed, the public intoxication statute does not define a breach of peace or an imminent danger "[n]or has our Indiana Supreme Court defined these terms in conjunction with the amended public intoxication statute." *Ruiz v. State*, 88 N.E.3d 219, 225 (Ind. Ct. App. 2017). "When we interpret a statute, we give its undefined 'words their plain meaning and consider the structure of the statute as a whole.'" *WTHR-TV v. Hamilton Se. Schs.*, 178 N.E.3d 1187, 1191 (Ind. 2002) (quoting *ESPN, Inc. v. Univ. of Notre Dame Police Dep't*, 62 N.E.3d 1192, 1195 (Ind. 2016)). In giving words their plain meaning, we may consult a dictionary. *See, e.g.*, *Hartman v. BigInch Fabricators & Constr. Holding Co., Inc.*, 161 N.E.3d 1218, 1224 (Ind. 2021) (looking first to Black's Law Dictionary and then to another dictionary).

[16] Drawing on precedent from other contexts, this Court has determined that a breach of peace "is a violation or disturbance of the public tranquility or order and includes breaking or disturbing the public peace by any riotous, forceful, or unlawful proceedings." *Ruiz*, 88 N.E.3d at 225 (quoting *Lemon v. State*, 868 N.E.2d 1190, 1194 (Ind. Ct. App. 2007)); *cf. Breach of the Peace*, Black's Law Dictionary (11th ed. 2019) (noting that a breach of peace generally includes "creating a public disturbance or engaging in disorderly conduct, particularly by making an unnecessary or distracting noise"). As to imminent danger, we apply the ordinary meaning of the terms and conclude that danger is imminent when "threatening to occur immediately," "dangerously impending," or "[a]bout to take place[.]" *Imminent*, Black's Law Dictionary (11th ed. 2019).

[17] According to Adams, "[w]ithout actual or threatened violence," he "could not have been found to have breached the peace or be about to breach the peace." Br. of Appellant at 19. Adams directs us to *Lemon*, 868 N.E.2d 1194. In *Lemon*, this Court looked to a footnote in an Indiana Supreme Court decision and ultimately determined that "violence, either actual or threatened, is an essential element of breaching the peace." *Id.* (citing *Price v. State*, 622 N.E.2d 954, 960 n.6 (Ind. 1993)). We note that the Supreme Court decision did not analyze the public intoxication statute; it focused on a constitutional challenge to the statute criminalizing disorderly conduct. *See Price*, 622 N.E.2d at 956-67. Still, we will proceed assuming arguendo that evidence of actual or threatened violence is necessary to support the instant conviction of public intoxication.

[18] The evidence shows that Adam was visibly intoxicated in a residential area with his behavior leading to a police report. When law enforcement responded, a bystander was tightly clutching a child. A group of people pointed toward Adams. When Officer Wilker approached Adams to check on his wellbeing, Adams was very aggressive—so aggressive that Officer Wilker sought the immediate assistance of backup. As Officer Wilker explained at trial, the situation was "tense, uncertain and rapidly evolving." Tr. Vol. 2 at 105. When another officer arrived in his vehicle, Adams took off running toward the vehicle. Officer Wilker was concerned to the point that he readied his taser.

[19] Viewing the evidence in a light most favorable to the verdict—as we must—the State presented sufficient evidence from which a jury could conclude, beyond a reasonable doubt, that Adams's conduct posed a threat of violence such that

there was an imminent danger of a breach of peace, if not a breach already. Adams's arguments amount to requests to reweigh evidence, which we decline. All in all, sufficient evidence supports the conviction of public intoxication.

Resisting Law Enforcement

[20] A person is guilty of resisting law enforcement if the 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**[.]" I.C. § 35-44.1-3-1 (emphasis added).

[21] Adams does not dispute that he resisted arrest. Rather, he argues that there is insufficient evidence that the officers were lawfully engaged in the execution of their duties. According to Adams, the officers used excessive force when one officer held his shoulders as two other officers tried to place him in handcuffs.

[22] The State acknowledges that "[a]n officer is not lawfully engaged in the execution of his duties when he uses unconstitutionally excessive force." Br. of Appellee at 9 (citing *Shoultz v. State*, 735 N.E.2d 818, 823 (Ind. Ct. App. 2000)). And the parties agree that the Fourth Amendment to the U.S. Constitution provides the controlling standard. Under the Fourth Amendment, the question is whether the use of force was "'objectively reasonable' in light of the facts and circumstances confronting [the officers], without regard to their underlying intent or motivation." *Shoultz*, 735 N.E.2d at 824 (citing *Graham v. Connor*, 490 U.S. 386, 396-97 (1989)). As the U.S. Supreme Court has explained, applying the test requires "careful attention to the facts and circumstances," including

"the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396.

[23] On appeal, Adams asserts that the use of force was "disproportionate" to his "only apparent act at that point, namely yelling and being rude to officers." Br. of Appellant at 21. Moreover, Adams again argues that he "did not present an immediate threat to the officers or the public justifying his restraint." *Id.* Adams also notes he was "subjected to three officers attempting to hold and control him" before Adams was informed that he was being arrested. *Id.*

[24] Although Officer Wilker did not inform Adams he was being arrested, that was because Officer Wilker did not feel he had time due to the "level of aggression" Adams displayed. Tr. Vol. 2 at 107. Moreover, as earlier discussed, Adams presented a threat of violence to the community. And there were multiple officers involved in subduing Adams because of the tense circumstances that Adams set into motion. All in all, the State presented sufficient evidence that the use of force was objectively reasonable under the circumstances of the case.

[25] Sufficient evidence supports the convictions.

[26] Affirmed.

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