

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Jimmy Shepherd,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

December 29, 2023

Court of Appeals Case No.  
23A-CR-496

Appeal from the Morgan Superior  
Court

The Honorable Dakota  
VanLeeuwen, Judge

Trial Court Cause No.  
55D01-2101-F5-97

**Memorandum Decision by Judge Kenworthy**  
Chief Judge Altice and Judge Weissmann concur.

**Kenworthy, Judge.**

## Case Summary

- [1] Three police officers and Jimmy Shepherd scuffled during the service of a warrant for Shepherd's arrest. Following a jury trial, Shepherd was convicted of Level 5 battery resulting in bodily injury to a public safety official<sup>1</sup> and Level 6 felony resisting law enforcement.<sup>2</sup> On appeal, he argues there is insufficient evidence to support his convictions. Determining the officers acted lawfully and there is sufficient evidence to support the convictions, we affirm.

## Facts and Procedural History

- [2] In December 2020, Deputy David Mowery went to Shepherd's residence to investigate an incident occurring there earlier. Shepherd asked Deputy Mowery if he had a warrant. Deputy Mowery said he did not have a warrant, and Shepherd told Deputy Mowery to leave the property unless Deputy Mowery had a warrant. Deputy Mowery left.
- [3] About a month later, Deputy Mowery went with Deputies Chase Pitcock and Mitchell Pfister to serve an arrest warrant at Shepherd's residence. They drove separately in marked police vehicles and wore their uniforms and badges. Once they arrived, Deputies Pfister and Mowery went to the front door, and Deputy Pitcock went to the back of the residence.

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<sup>1</sup> Ind. Code §§ 35-42-2-1(c)(1) & (g)(5)(A) (2020).

<sup>2</sup> I.C. §§ 35-44.1-3-1(a)(1) & (c)(1)(B) (2020).

[4] Deputy Mowery knocked on the door, and Shepherd opened it, remaining inside his home. Shepherd was about five feet ten inches tall and weighed about three hundred pounds—larger than any of the three deputies. Deputy Mowery said, “[W]hy don’t you come outside and talk to me?” *Tr. Vol. 2* at 212. Shepherd responded, “[W]hy?” *Id.* Deputy Mowery replied, “[W]hy don’t you just come outside, we need to talk to you.” *Id.* Shepherd again asked why, and Deputy Mowery explained there was a warrant for Shepherd’s arrest. Deputy Mowery told Shepherd, “[Y]ou need to step outside.” *Id.* Shepherd told Deputies Pfister and Mowery he needed to see the warrant. Shepherd “[r]etreated back into the residence” and attempted to close the door on the deputies. *Id.* at 190. Deputy Pfister prevented the door from closing and followed Shepherd across the threshold.

[5] Inside the house, the deputies “went hands on.” *Id.* at 213. Deputy Pfister grabbed Shepherd, and Shepherd “used his arm in a circular motion to . . . break [Deputy Pfister’s] grip.” *Id.* Deputy Mowery hooked his left arm under Shepherd’s left arm and pinned Shepherd’s arm against himself. Deputy Mowery unsuccessfully tried to pull Shepherd outside. Deputy Mowery continued to give Shepherd orders to “come outside” and “go to the ground.” *Id.* at 214–15.

[6] Meanwhile, Shepherd used his right arm to cup his hand around the back of Deputy Pfister’s neck, and Deputy Pfister punched Shepherd in the face. Shepherd pushed Deputy Pfister to the floor and released his grip on his neck. Deputy Pitcock had returned to the front of the house and “tried to grab onto . .

. Shepherd.” *Id.* at 165. Shepherd hit Deputy Pitcock and grabbed his face. Deputy Pitcock punched Shepherd in the face.

[7] After being pushed to the floor, Deputy Pfister “[c]reate[d] distance” from Shepherd, *id.* at 191, who was “kicking, thrashing about, [and] making threats,” *id.* at 165. The deputies told Shepherd to “stop fighting, stop resisting, put [his] hands behind [his back], [and] get on the ground.” *Id.* The deputies “weren’t winning hands on.” *Id.* at 166. Deputy Pfister used his taser on Shepherd, but Shepherd kept thrashing and pulled the taser probes out, disobeying commands from the deputies. Deputy Pitcock also tased Shepherd, allowing Deputy Mowery to begin handcuffing Shepherd.

[8] Deputy Mowery noticed Shepherd was wearing a wrist brace too large to fit in the handcuffs. Deputy Mowery removed the wrist brace, linked two sets of handcuffs together, and attempted to handcuff Shepherd. Shepherd complained of a shoulder injury, and Deputy Mowery linked a third set of handcuffs to create a “daisy chain” and handcuff Shepherd. *Id.* at 167.

[9] Once Shepherd was restrained, Deputy Pfister went to his patrol vehicle to print a copy of the warrant. The deputies called EMS—which was part of their procedure because they had tased Shepherd—and brought Shepherd outside to wait for EMS to arrive. Shepherd told Deputy Pitcock several times he was “going to kick [his] ass[.]” *Id.* at 167.

[10] Shepherd lowered the handcuffs behind his back and took a step backward to bring the handcuffs up in front of him. The deputies were concerned Shepherd

would use the handcuffs as a weapon. Deputy Pitcock “was able to get [Shepherd] back up against the wall of the residence,” but Shepherd “started grabbing and squeezing and trying to fight again.” *Id.* at 168–69. Deputy Pitcock pulled out his taser, and Shepherd tried to grab the taser. Deputy Pitcock was unable to tase Shepherd but struck Shepherd with his elbow. Shepherd fell down on all fours.

[11] Deputy Pfister ran back from his vehicle to help the other deputies. The deputies tried to return Shepherd’s hands behind his back, but Shepherd “was making threats, . . . keeping his hands underneath, . . . and pulling and squeezing as well.” *Id.* at 170. Deputy Pfister placed a taser on Shepherd’s back and activated a drive stun. Shepherd eventually put his hands behind his back after Deputy Pitcock used an “arm bar technique[.]” *Id.* at 170.

[12] EMS arrived, and Shepherd and the deputies went to the hospital. Deputy Pfister suffered a one and one-half inch scratch behind his left ear on his neck, which “was painful to the touch.” *Id.* at 193. Deputy Pitcock suffered a laceration on his right middle finger. Hospital staff X-rayed Deputy Pitcock’s hand and applied a “steri-strip” to the scratch. *Id.* at 172. The laceration left a scar.

[13] The State charged Shepherd with Level 5 felony battery resulting in bodily injury to a public safety official and two counts of resisting law enforcement—one as a Level 6 felony and one as a Class A misdemeanor.

[14] At the jury trial, Deputy Pitcock explained when officers serve an arrest warrant, they try to knock on the door and have the individual come out peacefully. He described concerns he has when the individual does not come out of the residence: “Immediate threat, an ambush type situation. . . . [I]t’s Morgan County, there’s numerous weapons in residences. I’ve had this issue before.” *Id.* at 161. Deputy Pfister said he typically takes an individual into custody before printing off the arrest warrant “for the safety of everyone[.]” *Id.* at 205. He explained it was “important that [Shepherd] was not able to close the door” after the deputies told him to step outside because “[t]here could be weapons inside of the residence. Anything that can hurt . . . [Shepherd], or others, as well as destroy evidence that could be there used against [Shepherd].” *Id.* at 190. Deputy Mowery said officers take individuals into custody before showing them the warrant to protect officers and individuals being arrested:

We go to people’s houses to serve warrants. At their houses, they have the advantage. We are the vulnerable party. I’ve been to countless houses that got rifles, shotguns, baseball bats on the other side of the door. . . . So for us, it’s better to get them in custody as fast as possible, that way there’s no kind of risk to us, to them, or to any other parties involved.

*Id.* at 213.

[15] The jury found Shepherd guilty as charged. The trial court entered judgment of conviction on the Level 5 felony battery and Level 6 felony resisting law enforcement and sentenced Shepherd accordingly.

## Sufficient Evidence Supports Shepherd's Convictions

- [16] Shepherd claims the evidence is insufficient to support his convictions. When reviewing sufficiency of the evidence, we “neither reweigh the evidence nor judge the credibility of the witnesses, and we respect ‘the jury’s exclusive province to weigh conflicting evidence.’” *Barnes v. State*, 946 N.E.2d 572, 577 (Ind. 2011) (quoting *Alkhalidi v. State*, 753 N.E.2d 625, 627 (Ind. 2001)). We consider only the probative evidence and reasonable inferences supporting the verdict, and we will affirm the conviction “unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017).
- [17] To prove Shepherd committed Level 5 felony battery as charged, the State was required to show Shepherd knowingly or intentionally touched Deputy Pfister, a public safety official, in a rude, insolent, or angry manner while Deputy Pfister was engaged in his official duties, resulting in bodily injury. *See* I.C. §§ 35-42-2-1(c)(1) & (g)(5)(A). To prove Shepherd committed Level 6 resisting law enforcement as charged, the State was required to show Shepherd knowingly or intentionally resisted Deputy Pitcock, a law enforcement officer, while Deputy Pitcock was lawfully engaged in his duties as a law enforcement officer. *See* I.C. §§ 35-44.1-3-1(a)(1) & (c)(1)(B). Shepherd claims the deputies were not lawfully engaged in their duties because they used excessive force.
- [18] Generally, “a private citizen may not use force in resisting a peaceful arrest by an individual he knows, or has reason to know, is a police officer performing

his duties regardless of whether the arrest in question is lawful or unlawful.” *Shoultz v. State*, 735 N.E.2d 818, 823 (Ind. Ct. App. 2000) (quoting *Casselman v. State*, 472 N.E.2d 1310, 1315 (Ind. Ct. App. 1985), *trans. denied*). But officers are no longer lawfully engaged in their duties when they use excessive force. *Patterson v. State*, 11 N.E.3d 1036, 1039 (Ind. 2014). We analyze claims of excessive force under the Fourth Amendment to the United States Constitution and its “reasonableness” standard. *Shoultz*, 735 N.E.2d at 823–24.

[19] Under this reasonableness test, we consider “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.” *Id.* at 824. “The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.* “The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Graham v. Connor*, 490 U.S. 386, 396–97 (1989).

[20] Shepherd argues he had not been violent in his previous encounter with Deputy Mowery, was not aggressive when he answered the door for the officers, and “there was no evidence he specifically was believed to own weapons.” *Appellant’s Br.* at 8. Shepherd claims this was “not an ambush situation”; he was outnumbered by officers three to one; he made no threats when the deputies first arrived; and he wore a brace restricting movement of his left wrist and hand. *Id.* Shepherd concedes stopping the door may have been warranted



but claims the physical contact deputies made by grabbing him in the doorway was excessive. *Id.* at 8–9.<sup>3</sup>

[21] The deputies' actions were objectively reasonable given the facts and circumstances. Shepherd was larger than any of the deputies. Two of the deputies knocked on Shepherd's front door and asked him twice to come outside. The deputies explained they had a warrant for his arrest and ordered Shepherd to come outside. Shepherd asked to see the warrant but then fled into his house when no warrant was presented. The deputies followed him in and tried to pull him back outside, but Shepherd cupped his hand around Deputy Pfister's neck and scratched him. Deputy Mowery continued ordering Shepherd to step outside. Shepherd pushed Deputy Pfister to the floor. Shepherd did not comply with the deputies' orders even after being tased—he tried to pull out the taser prongs. Once he was handcuffed, Shepherd threatened Deputy Pitcock several times. Shepherd stepped behind the cuffs to bring them in front of himself, creating a weapon. Shepherd tried to grab a

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<sup>3</sup> Shepherd implies the deputies acted unreasonably by failing to show him the warrant for his arrest before detaining him. *See id.* at 9 (“Despite prior contact with Shepherd and his questioning as to a warrant, none of the officers printed the warrant in advance of approaching Shepherd’s home.”). He points to a prior version of the statute governing the service of arrest warrants, under which officers were to show a defendant the warrant “if required.” *Id.* (quoting *Carlisle v. State*, 319 N.E.2d 651, 653 (Ind. Ct. App. 1974)). Shepherd admits the current version of the statute—Indiana Code Section 35-33-2-3—is silent about whether officers must show a defendant a physical copy of the warrant. Shepherd does not provide current Indiana law to support his argument that the deputies should have shown him the warrant before detaining him. *See* Indiana Appellate Rule 46(A)(8)(a) (requiring an appellant’s argument to be supported by citations to the authorities and statutes relied upon).

taser and continued threatening the deputies. He hid his hands under himself so the officers could not replace the handcuffs behind his back.

- [22] The deputies testified about detaining individuals before showing them a warrant for the safety of everyone involved. The deputies also explained the advantage individuals have when they manage to flee into their homes. The deputies did not use excessive force, and Shepherd's challenge amounts to a request to reweigh the evidence, which we will not do. *See Alkhalidi*, 753 N.E.2d at 627.

## **Conclusion**

- [23] Determining sufficient evidence supports Shepherd's convictions, we affirm.
- [24] Affirmed.

Altice, C.J., and Weissmann, J., concur.