

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.



ATTORNEY FOR APPELLANT

Andrew Bernlohr
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert M. Yoke
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Carrie Heithoff,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 9, 2022

Court of Appeals Case No.
21A-CR-2648

Appeal from the
Marion Superior Court

The Honorable
Jennifer P. Harrison, Judge

The Honorable
Steven J. Rubick, Magistrate

Trial Court Case No.
49D20-2007-F5-22998

Friedlander, Senior Judge.

- [1] Carrie Heithoff appeals her conviction of resisting law enforcement, asserting the State’s evidence was insufficient. Concluding there was sufficient evidence to sustain Heithoff’s conviction, we affirm.
- [2] The facts most favorable to the verdict follow. Officers Parker and Emmel of the Indianapolis Metropolitan Police Department were dispatched to do a wellness check at a residence. Finding no one home and receiving further information, the officers went to a nearby park where they located Heithoff. The officers separated, and Officer Parker encountered Heithoff first. When Heithoff indicated she wanted to harm herself, Officer Parker told her she was being detained. Heithoff walked away from Officer Parker but began walking back toward him when she saw Officer Emmel arrive. Officer Emmel approached Heithoff from behind and put her in a bear hug so that she could be detained and sent for evaluation. Heithoff fought the officers and bit Officer Emmel’s arm.
- [3] Based on this incident, the State charged Heithoff with battery resulting in bodily injury to a public safety official as a Level 5 felony and resisting law enforcement as a Class A misdemeanor.¹ A jury found Heithoff not guilty of battery and guilty of resisting, and the court sentenced her to eight days. Heithoff now appeals the sufficiency of the State’s evidence.

¹ Ind. Code § 35-44.1-3-1 (2020).

- [4] When we review a challenge 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), *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 fact-finder 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).
- [5] In order to obtain a conviction for resisting law enforcement as a Class A misdemeanor, the State must have proved beyond a reasonable doubt that (1) Heithoff (2) knowingly (3) forcibly resisted, obstructed, or interfered with (4) Andrew Emmel, a law enforcement officer (5) while said officer was lawfully engaged in his duties. *See* Appellant’s App. Vol. II, p. 23; *see also* Ind. Code § 35-44.1-3-1(a)(1). Heithoff challenges the State’s evidence as to the element that she acted knowingly—she asserts she did not know that the person restraining her was a police officer.
- [6] Officer Parker testified that once Heithoff revealed that she wanted to harm herself, he told her he was detaining her, and he prevented her from leaving the park in her vehicle. She walked away from him, and by that time Officer Emmel had arrived and was out of his car. When Heithoff saw Officer Emmel, she started walking back toward Officer Parker. Officer Parker testified that Officer Emmel came up behind Heithoff and put his arms around her in a bear hug maneuver, which she resisted.

[7] Officer Emmel testified that Officer Parker was the first to make contact with Heithoff. When Officer Emmel arrived, he saw Officer Parker talking to Heithoff, and he walked up behind Heithoff as she was telling Officer Parker that no one cared about her. As Officer Parker was trying to detain Heithoff, she backed away from him toward Officer Emmel who put her in a bear hug. Officer Emmel further testified that Heithoff resisted so he “took her to the ground,” and the officers put her in handcuffs so they could get control of her and get her to a hospital. Tr. Vol. II, p. 115. The prosecuting attorney asked Officer Emmel if, at that point in time, Heithoff was under arrest for a crime. The officer explained that, although they could have arrested her for resisting, they simply wanted to detain her to get her help. Officer Emmel testified that, once the ambulance arrived, he attempted to get Heithoff up and over onto the gurney, but she pulled away from him. He hooked his arm with hers and got her to the gurney. When he and the medics tried to strap Heithoff onto the gurney, she resisted by kicking, thrashing, and biting him. Finally, Officer Emmel testified that the decision to arrest Heithoff was made after she bit him.

[8] In arguing that she did not act knowingly, Heithoff is referring to her resistance to Officer Emmel’s bear hug. The evidence demonstrates, however, that the resistance charge stemmed from Heithoff’s struggle with Officer Emmel when he tried to help put her on the ambulance gurney. Our caselaw states that to convict under the resisting statute, the evidence must show the defendant knew or had reason to know that the person resisted is a police officer. *Stack v. State*, 534 N.E.2d 253 (Ind. Ct. App. 1989). It is clear that at the time Heithoff

resisted Officer Emmel's efforts to put her on the gurney she was aware he is a police officer. Accordingly, the State's evidence was sufficient.

[9] Even assuming the resisting charge was based on Heithoff's reaction to Officer Emmel's bear hug, the evidence was still sufficient. Officer Parker testified that when Heithoff saw Officer Emmel, she started walking back toward Officer Parker. It was after Heithoff had seen Officer Emmel that he put her in a bear hug, and she therefore had reason to know she was resisting a police officer. Moreover, the jury is the judge of the credibility of the witnesses, and a result of this function is that it is free to believe whomever it wishes. *Klaff v. State*, 884 N.E.2d 272 (Ind. Ct. App. 2008). The jury heard the evidence, made credibility determinations, and found Heithoff guilty of resisting. Her argument on appeal is simply an invitation for us to invade the exclusive province of the jury and reassess witness credibility, and we cannot accept. *See Brasher v. State*, 746 N.E.2d 71 (Ind. 2001) (it is within jury's province to judge credibility of witnesses).

[10] Based on the foregoing, we conclude the State presented evidence sufficient to support Heithoff's conviction of resisting law enforcement.

[11] Judgment affirmed.

May, J., and Crone, J., concur.