MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Niguel E. Guyton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 1, 2022

Court of Appeals Case No.
21A-CR-2810

Appeal from the
St. Joseph Superior Court

The Honorable
Julie P. Verheye, Magistrate

Trial Court Cause No.
71D08-1910-F6-1184

Molter, Judge.

[1] Niguel E. Guyton appeals his convictions for Level 6 felony intimidation and Class A misdemeanor resisting law enforcement. He argues the State failed to

present sufficient evidence that he committed either crime. We affirm, concluding the State's evidence was sufficient to support his convictions.

Facts and Procedural History

[2] On October 25, 2019, law enforcement officers were dispatched to an apartment complex in Mishawaka, Indiana to investigate a report regarding an alleged fight. Upon arriving at the scene, the officers observed Guyton and his brother walking away from a group of people. When the officers approached the brothers, they noticed that Guyton was "very upset and irate." Tr. at 13. The officers also learned that the alleged fight was over one of the girls in the group of people that the brothers had been walking away from and that Guyton was not a resident at the apartment complex.

[3] Soon after, the property manager of the apartment complex informed the officers that Guyton was banned from the property. The property manager wanted to serve Guyton with a "banishment notice," and, although Guyton was free to leave, he remained on the property to receive a hard copy of the notice. *Id.*at 14.

[4] In the meantime, Guyton began interacting with Lieutenant Douglas Grow, who was trying to get Guyton to cooperate and provide the officers with his name. Guyton not only "taunt[ed]" Lieutenant Grow, stepping on and off the apartment complex's property, but also screamed at him. *Id.* at 15. Eventually, within inches of Lieutenant Grow's face, Guyton stated, "What you gonna do, old man?" Ex. 1 at 0:51. Then, Guyton twice yelled at Lieutenant Grow, "I'm

gonna put you on your head!" *Id.* at 0:56. The officers, including Lieutenant Grow, understood Guyton's statements as a "threat of violence." Tr. at 16, 25.

[5] The officers subsequently attempted to arrest Guyton for his "direct threat." *Id.* at 16. They asked him multiple times to put his hands behind his back, but he did not comply. Later, to get him to cooperate, an officer pointed a taser at Guyton, but Guyton continued to ignore the officer's commands. The officer then tried to grab one of Guyton's wrists to restrain him, but Guyton pulled away from him. At that point, other officers assisted in successfully restraining Guyton.

[6] The State charged Guyton with intimidation as a Level 6 felony and resisting law enforcement as a Class A misdemeanor. In August 2021, a jury found Guyton guilty of both charges. The trial court sentenced Guyton to two years for the intimidation conviction and one year for the resisting law enforcement conviction. The sentences were ordered to run concurrently with the entire sentence suspended to probation. Guyton now appeals.

Discussion and Decision

[7] Guyton challenges the sufficiency of the evidence to support his convictions for intimidation and resisting law enforcement. When there is a challenge to the sufficiency of the evidence, "[w]e neither reweigh evidence nor judge witness credibility." *Gibson v. State*, 51 N.E.3d 204, 210 (Ind. 2016) (citing *Bieghler v. State*, 481 N.E.2d 78, 84 (Ind. 1985)). Instead, "we 'consider only that evidence most favorable to the judgment together with all reasonable inferences drawn

therefrom.'" *Id.* (quoting *Bieghler*, 481 N.E.2d at 84). "We will affirm the judgment if it is supported by 'substantial evidence of probative value even if there is some conflict in that evidence.'" *Id.* (quoting *Bieghler*, 481 N.E.2d at 84); *see also McCallister v. State*, 91 N.E.3d 554, 558 (Ind. 2018) (holding that, even though there was conflicting evidence, it was "beside the point" because that argument "misapprehend[s] our limited role as a reviewing court"). Further, "[w]e 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) (citing *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007)).

I. Intimidation

[8] To convict Guyton of intimidation, the State was required to prove beyond a reasonable doubt that Guyton communicated a threat to Lieutenant Grow with the intent that Lieutenant Grow be placed in fear of retaliation for the prior lawful act of performing his law enforcement duties. Ind. Code § 35-45-2-1(a) and (b)(1)(C). A "threat" is defined, in relevant part, as "an expression, by words or action, of an intention to: (1) unlawfully injure the person threatened." Ind. Code § 35-45-2-1(d)(1).

[9] Guyton's first claim on appeal is that the State presented insufficient evidence to prove that he intended to retaliate for Lieutenant Grow's prior lawful act. It is well settled that "intent may be proven by circumstantial evidence." *McCaskill v. State*, 3 N.E.3d 1047, 1050 (Ind. Ct. App. 2014). Intent can be

inferred from a defendant's conduct and the natural and usual sequence in which such conduct logically and reasonably points. *Id.* Moreover, "[t]he intent that matters is not whether the speaker really means to carry out the threat, but only whether he intends it to place the victim in fear of bodily harm or death." *Brewington v. State*, 7 N.E.3d 946, 963 (Ind. 2014) (alteration adopted and quotation marks omitted).

[10] Here, Guyton, who was waiting to be served with a banishment notice from the apartment complex's property manager and who was very angry because Lieutenant Grow was trying to get him to cooperate, yelled at Lieutenant Grow: "I'm gonna put you on your head!" Ex. 1 at 0:56. Lieutenant Grow testified that he understood Guyton's statement as a "threat of violence." Tr. at 25. And another officer, who witnessed the interaction between Guyton and Lieutenant Grow, testified that Guyton's statement was a "direct threat" and that he believed Guyton was "going to strike Lieutenant Grow or take him to the ground." *Id.* at 16. Further, before yelling that he would put Lieutenant Grow on his head, Guyton had been taunting and screaming at him. At one point, within inches of Lieutenant Grow's face, Guyton stated: "What you gonna do, old man?" Ex. 1 at 0:51. Thus, the jury could reasonably infer that, when threatening Lieutenant Grow, Guyton intended to place him in fear of retaliation for his lawful action—taken in his professional capacity—of trying to get Guyton to cooperate with the officers' investigation of the alleged fight.

II. Resisting Law Enforcement

[11] Guyton's second claim on appeal is that the State failed to establish that he committed resisting law enforcement, particularly, that it failed to establish that he forcibly resisted. A person commits Class A misdemeanor resisting law enforcement when he knowingly or intentionally "forcibly resists, obstructs, or interferes with a law enforcement officer . . . while the officer is lawfully engaged in the execution of the officer's duties." Ind. Code § 35-44.1-3-1(a)(1). "[O]ne forcibly resists law enforcement when strong, powerful, violent means are used to evade a law enforcement official's rightful exercise of his or her duties." *Tyson v. State*, 140 N.E.3d 374, 377 (Ind. Ct. App. 2020) (quotation marks omitted), *trans. denied*. The force element may be satisfied with even a modest exertion of strength, power, or violence. *Id.* (citing *Graham v. State*, 903 N.E.2d 963, 965 (Ind. 2009) (stating that '"stiffening' of one's arms when an officer grabs hold to position them for cuffing would suffice")).

[12] In support of his argument, Guyton relies on the opinion in *K.W. v. State*, 984 N.E.2d 610 (Ind. 2013). In *K.W.*, our Supreme Court concluded that the evidence was insufficient to show forcible resistance where an officer attempted to handcuff a juvenile, and the juvenile "turned to walk away, pulling against [the officer's] grasp on his wrist." *Id.* at 611 (emphasis added). Here, Guyton's conduct is distinguishable from the conduct in *K.W.* The officer who attempted to arrest Guyton, Officer Jeffrey Giannuzzi, testified that he ordered Guyton to put his hands behind his back multiple times and that Guyton failed to comply. He also explained that, to get Guyton to cooperate, he pointed a taser at

Guyton, but Guyton continued to ignore his commands. Officer Giannuzzi then described how he tried to grab one of Guyton's wrists to restrain him, but Guyton pulled away from him. In all, multiple officers were required to successfully restrain Guyton. As another officer testified, because Guyton refused to cooperate, "numerous officers [were required] to get involved [so] that . . . nobody [got] hurt." Tr. at 26. Thus, the State's evidence of Guyton's use of force to resist Officer Giannuzzi's attempt to restrain him is sufficient to sustain his conviction for resisting law enforcement. *See, e.g.*, *Johnson v. State*, 833 N.E.2d 516, 517 (Ind. Ct. App. 2005) (concluding that the evidence was sufficient to sustain a conviction for resisting law enforcement where the defendant "pushed away with his shoulders" when an officer attempted to search him and "stiffened up" when officers attempted to get him into a police vehicle).

[13] Further, we note that Guyton draws our attention to Officer Giannuzzi's testimony that Guyton did "not [use] a lot" of force to pull away from him. Tr. at 20. However, that does not mean that Guyton did not use *any* force to pull away from the officer. *See Tyson*, 140 N.E.3d at 377 (explaining that the force element may be satisfied with even a modest exertion of strength, power, or violence). Also, this argument is nothing more than an invitation to reweigh the evidence, which we will not do. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005).

[14] In sum, the State presented sufficient evidence to support Guyton's convictions of intimidation as a Level 6 felony and resisting law enforcement as a Class A misdemeanor.

[15] Affirmed.

Mathias, J., and Brown, J., concur.