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**IN THE
COURT OF APPEALS OF INDIANA**

JASON L. FOLTZ,

Appellant- Defendant,

vs.

STATE OF INDIANA,

Appellee- Plaintiff,

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No. 57A03-1011-CR-614

APPEAL FROM THE NOBLE SUPERIOR COURT
The Honorable Michael J. Kramer, Judge
Cause No. 57D02-1006-CM-490

July 8, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Jason L. Foltz appeals his conviction, following a bench trial, of resisting law enforcement, a Class A misdemeanor. For our review, Foltz raises one issue: whether his conviction for resisting law enforcement is supported by sufficient evidence. Concluding the evidence is sufficient, we affirm.

Facts and Procedural History

On June 19, 2010, Officer Joseph Handshoe and Sergeant John Dixon from the Kendallville Police Department, who were in full police uniform, responded to reports of a disturbance in the apartment of Heather and Corey McCormick. While Officer Handshoe was talking to Heather, he heard and saw a person walking into the McCormicks' apartment through the patio door. The person noticed the policeman and began to leave the apartment. At that point, Officer Handshoe told the person to stop. The person did not comply and exited the apartment.

Officer Handshoe followed the person outside; however, he had to abandon the pursuit as a dog aggressively turned on the officer. Consequently, Officer Handshoe contacted Deputy Eric Lawson of the Avilla Police Department and requested assistance. Deputy Lawson was in full police uniform and drove his fully marked police vehicle with its emergency lights activated to the location. While Deputy Lawson was preparing to set up a containment perimeter in a field adjacent to the apartments, he saw a man standing in the roadway about fifty yards away and began to chase him on foot. Deputy Lawson also contacted Officer Handshoe to alert him to the man running toward the apartments. Shortly afterwards, Deputy Lawson lost sight of the man. Eventually, Sergeant Dixon took Foltz into custody in the apartment complex.

Initially, Foltz claimed that he fled from the apartment because Corey McCormick had beaten him and he was scared. At trial, Officer Handshoe and Deputy Lawson identified Foltz as the man they had seen running from them. To the contrary, Foltz testified that he never fled from the officers that morning. Deputy Lawson had only a flashlight to illuminate the man who ran from him; however, Deputy Lawson described the man's hat and clothing, which was consistent with how Foltz was dressed at the time of his arrest. Officer Handshoe did not know if the man he was chasing was wearing a hat. Sergeant Dixon did not testify. Neither officer who testified saw Corey McCormick that night or knew what he looked like; Foltz testified he and Corey look somewhat similar. Foltz also admitted that he was intoxicated at the time of this incident.

On June 21, 2010, the State charged Foltz with Class A misdemeanor resisting law enforcement and Class C misdemeanor public intoxication. A bench trial was held on November 18, 2010, and Foltz was convicted of both crimes. The trial court sentenced Foltz to 365 days with all but thirty days suspended for resisting law enforcement and 180 days with all but thirty days suspended for public intoxication. In addition, Foltz was sentenced to 335 days of probation. Foltz now appeals his conviction of resisting law enforcement. However, Foltz does not challenge his conviction of public intoxication.

Discussion and Decision

I. Standard of Review

When considering a claim of insufficient evidence to support a criminal conviction, we neither reweigh the evidence nor judge witness credibility. Joslyn v. State, 942 N.E.2d 809, 811 (Ind. 2011).

[A]ppellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. . . . To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations, citations, and emphasis omitted).

II. Resisting Law Enforcement

To convict Foltz of resisting law enforcement as a Class A misdemeanor, the State must prove beyond a reasonable doubt that Foltz knowingly or intentionally “fle[d] from a law enforcement officer after the officer ha[d], by visible or audible means, including operation of the law enforcement officer’s siren or emergency lights, identified himself or herself and ordered the person to stop.” Ind. Code § 35-44-3-3(a)(3). Two officers, who were in full police uniform at the time of the events that resulted in Foltz’s arrest and one of whom was driving his squad car with lights activated when he first encountered Foltz, testified that Foltz fled from them after being ordered to stop. On appeal, Foltz contends that the State did not present sufficient evidence to prove Foltz’s identity beyond a reasonable doubt. However, Foltz has failed to show that no reasonable trier of fact could have found the elements of the crime proven beyond a reasonable doubt.

Foltz argues that his case is similar to Vest v. State, 621 N.E.2d 1094 (Ind. 1993), where our supreme court reversed a defendant’s battery conviction for intentionally burning a child on the foot with a lighted cigarette. Initially, the defendant in Vest denied any guilt. He later stated to police that he might have accidentally burned the child when

he tried to discard a cigarette by flicking it off the porch in her proximity some time prior to this incident. Our supreme court reversed the conviction for lack of evidence that it was the defendant who burned the child. Id. at 1096. The child did not testify, and the defendant's identity as the perpetrator could only be inferred from evidence that he was a smoker, that the child often spent time with him and had walked by his house two days before the injury was reported, and that he conceded he could have accidentally injured her in the past. The court held this inference was based on insufficient evidence. Id. The evidence in Vest differs from the evidence presented against Foltz by two officers who identified Foltz as the man running from them when ordered to stop. The facts in Vest are distinguishable from the case at bar and, therefore, the outcome of Vest does not support the reversal of Foltz's conviction.

Foltz next argues that a reasonable trier of fact could not have found that Foltz was the offender based on identification of Foltz by the police officers. For instance, Foltz mentions that Officer Handshoe did not notice whether Foltz was wearing a hat when he saw him in the apartment, but Deputy Lawson testified he was later wearing a hat. We note that a trier of fact could have reasonably found credible Officer Handshoe's explanation that he did not notice the hat because he was focused on the face of the fleeing person for purposes of subsequent identification. Thus, a finder of fact could reasonably conclude that evidence Foltz was wearing a hat does not contradict Officer Handshoe's testimony that he did not notice a hat. Alternatively, a fact finder may reasonably believe that a hat is an accessory that can be easily taken off or put on quickly even if the person is running.

Furthermore, even when there are discrepancies between the testimonies of

witnesses a finder of fact may reasonably find the testimony of a certain witness credible. “When there is conflicting evidence, it is the responsibility of the [trier of fact] to decide whom they will believe and whom they will not.” Hood v. State, 561 N.E.2d 494, 497 (Ind. 1990) (finding sufficient evidence of identity when, despite instances where eyewitness’ credibility might be questioned, the defendant was positively identified as the shooter by the eyewitnesses). Therefore, a reasonable fact finder could find Officer Handshoe’s identification of Foltz credible even if Officer Handshoe did not notice Foltz’s hat.

Foltz also presents an alternative version of the events that led to his arrest. Foltz contends that the person who disregarded the orders to stop and fled from the officers was Corey McCormick, who also left his apartment before the officers arrived. To support the contention, Foltz testified that the officers were not familiar with Corey’s appearance. At trial, Foltz testified that he and Corey look “[s]omewhat similar.” Transcript at 46. Foltz also testified that he had, on occasion, given Corey his ID for the younger man to use “[t]o buy cigarettes.” Id. Foltz does not present any facts showing that Corey succeeded in purchasing cigarettes with Foltz’s identification card. From these statements, it is possible to conclude that Corey and Foltz look sufficiently different, so that the officers would not have had any difficulty positively identifying Foltz.

Even if Corey and Foltz have a similar appearance, and Deputy Lawson saw the fleeing man in the dark with only a flashlight, while Officer Handshoe saw the man fleeing from the apartment only briefly, a reasonable trier of fact could conclude that trained and experienced officers could positively recognize Foltz’s face and give

credence to their testimony. The testimony of the officers is not so incredibly dubious or so inherently improbable that no reasonable person could believe it. See Clay v. State, 755 N.E.2d 187, 189 (Ind. 2001) (“For testimony to be so inherently incredible that it is disregarded based on a finding of ‘incredible dubiousity,’ the witness must present testimony that is inherently contradictory, wholly equivocal or the result of coercion, and there must also be a complete lack of circumstantial evidence of the defendant’s guilt.”) (citation omitted).

Foltz brings forward other circumstances surrounding the events leading to his arrest, presenting them as contrary evidence. We note again that it is “not necessary that the evidence overcome every reasonable hypothesis of innocence,” Drane, 867 N.E.2d at 147, and “[i]t is the fact-finder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction,” id. at 146. The fact finder found the officers to be credible witnesses. Therefore, the direct eyewitness testimony of the officers is sufficient evidence to support Foltz’s conviction of resisting law enforcement.

Conclusion

Evidence that Foltz fled from fully uniformed officers after he was ordered to stop was sufficient to support his conviction of resisting law enforcement. The conviction is therefore affirmed.

Affirmed.

NAJAM, J., and CRONE, J., concur.