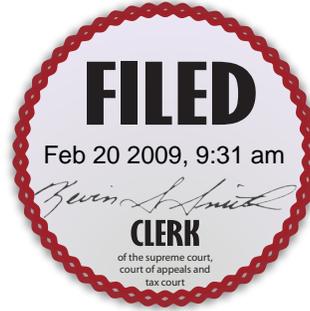


**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**



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**IN THE  
COURT OF APPEALS OF INDIANA**

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CHRISTOPHER J. WILLUMSEN, )

Appellant-Defendant, )

vs. )

No. 84A05-0809-CR-530

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE VIGO SUPERIOR COURT  
The Honorable David R. Bolk, Judge  
Cause No. 84D03-0706-FC-1950

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**February 20, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Following a jury trial, Appellant-Defendant Christopher Willumsen was convicted of Class D felony Resisting Law Enforcement,<sup>1</sup> for which he received a sentence of two years and sixteen days in the Department of Correction. On appeal, Willumsen does not dispute that he committed resisting law enforcement but challenges the sufficiency of the evidence to support his enhanced Class D felony conviction. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On June 13, 2007, Terre Haute Police Detective Scott Funkhouser sought to serve Willumsen with an arrest warrant on an unrelated matter. En route to Willumsen's address in Terre Haute, Detective Funkhouser saw Willumsen walking near the intersection of Seventh and Walnut Streets. Detective Funkhouser parked and exited his vehicle, approached Willumsen, and identified himself as a detective. Detective Funkhouser asked Willumsen, who was carrying books, to place them on the ground. Willumsen complied and asked what the purpose of the encounter was. Detective Funkhouser informed Willumsen that he had a warrant for his arrest, at which point Willumsen grabbed what appeared to be a magazine or "rolled up piece of paper" from his back pocket. Tr. p. 33. Willumsen held the paper/s in front of him, which Detective Funkhouser could see contained a partially-exposed yellow utility knife. According to Detective Funkhouser, Willumsen, whose thumb was resting upon the slide trigger for the knife blade, was holding the knife such that he could easily maneuver and wield it. The blade of the knife, however, did not appear to be open. Detective Funkhouser pulled out his gun and ordered Willumsen to drop the knife, which he did not do. Additional

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<sup>1</sup> Ind. Code § 35-44-3-3 (2006).

officers arrived on the scene who also ordered Willumsen at gunpoint to drop his knife. A short time thereafter, Willumsen placed the knife, which was still inside the rolled-up paper, on the ground. Willumsen then raised his fists and assumed a fighting stance. The officers subsequently subdued and arrested Willumsen.

On June 19, 2007, the State charged Willumsen with Class C felony intimidation and Class D felony resisting law enforcement. During a June 17-18, 2008 jury trial, the jury acquitted Willumsen of intimidation but found him guilty of Class D felony resisting law enforcement. Following a July 14, 2008 sentencing hearing, the trial court sentenced Willumsen to serve two years and sixteen days for his resisting law enforcement conviction. Based upon Willumsen's credit time of one year and eight days and his good time credit of an additional one year and eight days, the trial court determined that Willumsen's sentence had been served. This appeal follows.

### **DISCUSSION AND DECISION**

Willumsen challenges the sufficiency of the evidence to support his conviction for Class D felony resisting law enforcement. Willumsen does not dispute that he committed resisting law enforcement but claims that his handling a knife with a retracted blade is inadequate to constitute Class-D-felony-level resisting law enforcement.

Our standard of review for sufficiency-of-the-evidence claims is well-settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. We consider only the evidence which supports the conviction and any reasonable inferences which the trier of fact may have drawn from the evidence. *Id.* We will affirm the conviction if there is substantial

evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. *Id.* It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Jones v. State*, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998).

Under Indiana Code section 35-44-3-3(a)(1), a person commits resisting law enforcement if 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. Under Indiana Code section 35-44-3-3(b)(1)(B) such action constitutes a Class D felony if the person committing this offense "draws or uses a deadly weapon[.]"

Willumsen focuses his challenge on the definition of "draw," which the Indiana Supreme Court, interpreting a different statute, defined in *Dunkle v. State*, 241 Ind. 548, 552, 173 N.E.2d 657, 659 (1961), as "the act by which the particular weapon is taken out of or removed for use, from the enclosure which contained it." (Emphasis omitted). Willumsen points to the undisputed evidence that he did not use the slide trigger to extend the blade and argues that his handling a knife with a retracted blade did not constitute "drawing" a deadly weapon as "drawing" is defined in *Dunkle*. In making this argument, Willumsen seeks to distinguish the knife from the blade, suggesting that the knife itself constitutes an enclosure, and that the blade must be extended from the knife in order to be "removed for use." Yet the "enclosure" contemplated by the Supreme Court in *Dunkle* is not the knife itself but rather a separate compartment, located on the person, from which the knife is removed for use. Indeed, as the *Dunkle* Court observed, certain

weapons, including knives, “are commonly carried within a holster, sheath, *pocket* or other small enclosure *upon a person*.” *Id.* (emphasis supplied). Here, as Detective Funkhouser approached him, Willumsen removed his knife from a pocket on his person and placed his hand on the slide trigger, permitting the reasonable inference that he was preparing it for use against the police officers. The fact that the blade was not extended does not alter that inference; indeed, the retracting blade facilitated Willumsen’s use of the knife by permitting him the advantage of surprise during the encounter. We are convinced that Willumsen’s removal of a knife from a pocket on his person, even with the retracted blade, fits squarely within the *Dunkle* conception of “draw.”

Of course, Indiana Code section 35-44-3-3(b)(1)(B) is written in the disjunctive, so a defendant may be convicted of Class D felony resisting law enforcement if he either “draws” or “uses” a deadly weapon. Willumsen does not dispute that his knife was a deadly weapon. To be sure, both pocket knives and utility knives have been held to be deadly weapons. *See Hollowell v. State*, 707 N.E.2d 1014, 1020-21 (Ind. Ct. App. 1999) (pocket knife); *Robinson v. State*, 543 N.E.2d 1119, 1120 (Ind. 1989) (utility knife). The only remaining question, then, is whether Willumsen “used” the knife in resisting law enforcement. The facts most favorable to the verdict demonstrate that Willumsen removed the partially-concealed knife from his pocket when Detective Funkhouser informed him of his arrest warrant, held the knife with both hands and his thumb on the slide trigger, and refused to drop it when ordered to do so. The jury was within its fact-finding discretion to draw the reasonable inference from these facts that Willumsen “used” the knife in resisting law enforcement.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and MAY, J., concur.