

Ronald L. Wright appeals his conviction of two counts of resisting law enforcement.¹

We affirm.

FACTS AND PROCEDURAL HISTORY

On January 28, 2008, Officer Nicholas Amor responded to an “officer needed call.” (Tr. at 24.) Officer Amor spoke to Marsheena Walter concerning a “domestic situation” involving Wright. (*Id.* at 25.) Walter told Officer Amor that Wright drove a black Pontiac Bonneville. As Walter and Officer Amor were speaking, Wright passed by in his Bonneville. Officer Amor got into his police car and followed him. When Officer Amor drew close to the Bonneville, it sped up. After Officer Amor saw the car roll through a stop sign, he initiated a traffic stop.

As Officer Amor approached the Bonneville, Wright stuck the upper part of his body out the window and turned toward Officer Amor. Wright’s hands remained inside the vehicle, where Officer Amor could not see them. It appeared to Officer Amor that Wright was reaching for something. Concerned that Wright might have a weapon, Officer Amor ordered Wright to show his hands. Officer Amor repeated this command several times, but Wright did not comply. Officer Amor then drew his weapon, holding it in the “low ready” position, aimed toward the ground. (*Id.* at 37.)

Meanwhile, Officers Richard Murphy and Adam Burton arrived on the scene. Seeing that Wright was not complying with Officer Amor’s orders, Officer Murphy also drew his gun, and he approached Wright’s car on the passenger side. After asking several more times

¹ Ind. Code § 35-44-3-3.

for Wright to show his hands, Officer Amor aimed his gun “at center mass.” (*Id.* at 39.) Wright eventually complied, and the officers holstered their weapons. Wright then pulled his hands back inside the vehicle and drove off at a high rate of speed.

Officer Amor followed Wright, and Officer Burton followed Officer Amor. Wright was traveling at least twice the posted speed limit. Officer Amor saw Wright’s car “leap” over train tracks. (*Id.* at 47.) They passed a park, some subdivisions, and a school in an “extremely busy” and “congested” area. (*Id.* at 48.) Wright ran a red light; then to avoid traffic, he drove on the wrong side of the road going up a hill. Wright stopped at a red light at a congested intersection, but as Officer Amor approached, Wright managed to “wiggle through the cars” and proceed through the intersection. (*Id.* at 56.)

The chase continued at a high rate of speed. At an intersection that was sloped for drainage, Wright’s car ramped into the air. Eventually, Wright came to a T-intersection and lost control while trying to make the turn. Wright’s car hit a tree, spun around, crashed into another tree, and then came to rest in a driveway.

Wright got out of the vehicle and fled on foot. Officer Amor followed, commanding Wright to stop. Wright started to scream, “kill me, kill me.” (*Id.* at 65.) Fearing that Wright was trying to place him in a position where he would have to use his gun, Officer Amor holstered his gun and pulled out his taser. Officer Amor fired once and missed. He fired again, but it did not work properly because of Wright’s layers of clothing. At that point, Officer Amor was out of cartridges for his taser.

Officer Eric Wallace arrived on the scene and joined the pursuit. Officer Wallace, Officer Amor, and Wright all collided and fell to the ground. The officers ordered Wright to put his hands behind his back, but he resisted. Wright would either keep his arms beneath him or flail around. Unable to restrain Wright, Officer Wallace struck Wright two to four times on the side of his face, aiming for pressure points. Both officers attempted to stun Wright with a taser, but that was ineffective because of Wright's layers of clothing and because his flailing made them lose contact.

Other officers arrived and joined the struggle. Officer Ryan Sanders twisted Wright's foot in an effort to flip him over onto his stomach. Officer Chandler Cahoon turned Wright's head so he could make eye contact with Wright and tell him "that he was not going to win this fight . . . and that he should . . . stop resisting and be handcuffed so that he could avoid further injury and pain to himself." (*Id.* at 143.) Eventually, Officer Amor was able to make good contact with another officer's taser, and four or five officers were then able to restrain Wright and put him in handcuffs. The officers then disengaged and called an ambulance for Wright.

Officer Sanders searched Wright's vehicle and found a cigar filled with marijuana. Officer Cahoon searched Wright and found three taser probes embedded in Wright's jacket. None had gone all the way through. There were no probes embedded in Wright's body. Officer Burton accompanied Wright to the hospital and searched his clothes more thoroughly. He found four bags of marijuana in a pocket. At the hospital, Wright's blood and urine were screened for drugs. His urine sample was positive for marijuana.

Wright was charged with two counts of Class D felony resisting law enforcement. One count alleged he fled by vehicle from Officers Amor and Wallace. The other count alleged he forcibly resisted Officers Amor, Wallace, Burton, Pierce, and Lorton and inflicted bodily injury on an officer. Wright was also charged with Class A misdemeanor possession of marijuana, Class B misdemeanor failure to stop after an accident, Class B misdemeanor reckless driving, and Class C misdemeanor operating while intoxicated.²

At the jury trial, Officers Amor, Wallace, Sanders, Cahoon, Burton, and Murphy testified to the foregoing facts. Officer Amor testified he landed on his shoulder when he fell to the ground after he collided with Wright and Officer Wallace. Officer Amor testified he had constant pain in his shoulder for a couple days. Officer Wallace testified his hand was swollen, had sustained abrasions, and was painful to move.

Wright testified he had acted in self-defense. He claimed he was obeying all traffic laws when Officer Amor stopped him. He claimed Officer Amor got out of his vehicle with his gun drawn and his finger on the trigger. Wright stated he asked several times why he was being pulled over, but Officer Amor would not answer. Wright testified he was afraid because of his race,³ because Officer Amor was not answering him, and because Officer Amor had his finger on the trigger and appeared nervous. Therefore, he fled, hoping to find a public place where others would see what was happening. Wright denied disregarding stop signs or lights. He acknowledged he was traveling at a high rate of speed, but claimed this

² The State charged Wright with two additional offenses against Walter but apparently dismissed those charges before trial.

³ The officers are all white, and Wright is black.

was because he thought Officer Amor was going to crash into him.

Wright claimed he tried to surrender after he crashed, but Officer Amor drew his taser anyway. Wright stated he fled to avoid the taser. Wright denied saying, “kill me,” and instead said he was calling for help. (*Id.* at 245.) Wright claimed Officers Amor and Wallace tackled him. Wright stated he tried to surrender, but Officer Wallace kept punching him in the eye, and Officer Amor was tasing him. Wright claimed he was tased in excess of fifteen times. Wright admitted two photos, which purported to show a bruised eye and taser wounds on his back.

The jury found Wright guilty on all charges, and the trial court sentenced him to an aggregate term of four years.⁴

DISCUSSION AND DECISION

Wright raises three issues, which we restate as: (1) whether the State presented sufficient evidence to rebut Wright’s claim that he acted in self-defense when he fled from the officers; (2) whether Wright inflicted injuries on the officers in the meaning of Ind. Code § 35-44-3-3; and (3) whether the officers used excessive force, thus justifying Wright’s use of force.

1. Self-defense

“A person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force.” Ind. Code § 35-41-3-2(a).

⁴ On appeal, Wright contests only his two convictions of resisting law enforcement.

In order to prevail on such a claim, the defendant must show that he: (1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm. When a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements. If a defendant is convicted despite his claim of self-defense, this Court will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt The standard of review for a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. We neither reweigh the evidence nor judge the credibility of witnesses. If there is sufficient evidence of probative value to support the conclusion of the trier of fact, then the verdict will not be disturbed.

Wilson v. State, 770 N.E.2d 799, 800-801 (Ind. 2002) (citations omitted).

Wright notes his own testimony that the officers would not tell him why he had been pulled over; that Officer Amor exited his car with his gun drawn, had his finger on the trigger, and appeared nervous; and that Wright was concerned the incident was racially motivated. Even if Wright subjectively believed it was necessary to flee the officers to avoid injury to himself, the State presented sufficient evidence to show his belief was not reasonable. *See Littler v. State*, 871 N.E.2d 276, 279 (Ind. 2007) (The phrase “reasonably believes” in the self-defense statute “requires both subjective belief that the force was necessary to prevent serious bodily injury, and that such actual belief was one that a reasonable person would have under the circumstances.”).

Officer Amor testified Wright appeared to be reaching for something in the car. Concerned that Wright might have been reaching for a weapon, Officer Amor ordered Wright several times to show his hands. After Wright refused to comply with the orders, Officer Amor drew his weapon and held it in the “low ready” position. (Tr. at 37.) Officer

Amor did not raise his weapon until after he ordered Wright several more times to show his hands. Officer Murphy drew his weapon after he realized Wright was not complying with Officer Amor's orders.

When Wright finally showed his hands, both officers holstered their weapons. Wright fled after the officers had holstered their weapons. Officers Burton and Murphy testified Officer Amor did not threaten Wright. This evidence is sufficient to show Wright did not reasonably fear for his safety when he fled from the officers. *See Simpson v. State*, 915 N.E.2d 511, 515 (Ind. Ct. App. 2009) (Simpson argued he shot Cooper because Cooper was beating Thompson; we held the State proved Simpson did not have a reasonable fear of Cooper would hurt Thompson because witnesses testified the fight between Cooper and Thompson was over when Simpson shot Cooper), *trans. denied*. To the extent that Wright's testimony conflicts with the officers, we may not consider it because it is not favorable to the verdict, and we will not reweigh the evidence.⁵

2. Injury

A person commits resisting law enforcement if the person knowingly or intentionally forcibly resists, obstructs, or interferes with a law enforcement officer while the officer is lawfully engaged in the execution of his duties. Ind. Code § 35-44-3-3(a). It is a Class D felony if, while committing the offense, the person "inflicts bodily injury on or otherwise

⁵ Wright argues we must reverse his conviction because his version of the incident is as plausible as the officers' version. In support, he cites *Robey v. State*, 454 N.E.2d 1221, 1222 (Ind. 1983), for the proposition that if the evidence is susceptible to two interpretations, each of which appears to be reasonable, the trier of fact must adopt the interpretation that is consistent with the accused's innocence. This language came from a jury instruction. It is not the appellate standard of review. *See, e.g., Wilson*, 770 N.E.2d at 800-01 (stating the standard of review for sufficiency of evidence claims).

causes bodily injury to another person.” Ind. Code § 35-44-3-3(b)(1)(B). Wright argues he did not “inflict” injury on the officers because Officer Wallace injured his hand hitting Wright and Officer Amor hurt his shoulder when he fell to the ground after colliding with Wright and Officer Wallace.⁶

We considered and rejected a similar argument in *Whaley v. State*, 843 N.E.2d 1 (Ind. Ct. App. 2006). Whaley fled the police and was caught by two deputies when he fell down. Whaley put his arms beneath his body to prevent the deputies from handcuffing him. The deputies had to hit Whaley’s forearms in order to gain control of his arms. As a result, the deputies sustained injuries to their hands and wrists. Whaley was convicted of Class D felony resisting law enforcement.

On appeal, Whaley argued he did not inflict injuries on the deputies; rather, they had inflicted the injuries on themselves. We affirmed, holding the statute contemplated injuries that were “directly related to and caused by” the act of resisting arrest. *Id.* at 11. Similarly, Officers Amor and Wallace were injured trying to subdue Wright, who was resisting arrest. This evidence was sufficient to sustain his conviction of Class D felony resisting law enforcement. *See id.*

⁶ The State suggests we need not consider Wright’s conviction of resisting law enforcement by forcibly resisting if we affirm his conviction of resisting law enforcement by fleeing because the sentences were ordered to be served concurrently. We decline the State’s invitation to hold a defendant loses his right to appeal a conviction simply because it has no effect on the sentence he is currently serving. *See, e.g., Gregory v. State*, 885 N.E.2d 697, 703 (Ind. Ct. App. 2008) (“A double jeopardy violation occurs when judgments of conviction are entered and cannot be remedied by the ‘practical effect’ of concurrent sentences or by merger after conviction has been entered.”), *trans. denied.*

3. Excessive Use of Force

In the alternative, Wright argues he was justified in resisting the officers because they used excessive force to subdue him. Generally, “a private citizen may not use force in resisting a peaceful arrest by an individual who 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)), *reh’g denied, trans. denied*. However, the rule is not “intended as a blanket prohibition so as to criminalize any conduct evincing resistance where the *means used* to effect and arrest are unlawful.” *Id.* (quoting *Casselman*, 472 N.E.2d at 1316) (emphasis in *Casselman*). Thus, when an officer uses excessive force in effecting an arrest, the citizen may resist “in the absence of evidence that the force used to resist an officer’s excessive force was not itself disproportionate to the situation.” *Id.* We consider whether the officers’ actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Id.* (citing *Graham v. Connor*, 490 U.S. 386, 396-97 (1989)).

Wright notes his evidence that his eye was bloodied and bruised and that he sustained taser wounds on his back. He also notes the officers testified they twisted his head and foot, used their tasers on him, and punched him. However, the evidence favorable to the verdict demonstrates the officer’s actions were objectively reasonable.

When the officers first encountered Wright, he refused to show his hands, and the officers were concerned that he was armed. Wright fled from the police, leading them on a

high speed chase through residential areas, through high-traffic areas, past a park, and past a school. Wright crashed, then fled on foot. Wright yelled “kill me, kill me.” (Tr. at 65.) Thinking Wright was trying to commit “suicide by cop,” Officer Amor put his gun away and drew his taser, hoping to immobilize Wright. (*Id.*) Officer Amor testified he used his taser several times, but due to Wright’s layers of clothing, the taser had no effect on Wright until Officer Amor finally made good contact near the end of the struggle.

Officer Wallace acknowledged he hit Wright in the face because he was flailing around on the ground, and they had been unable to handcuff him. Officer Wallace testified he was not “randomly” punching Wright, but was aiming for pressure points as he was trained to do. (*Id.* at 105.) Officer Sanders testified he twisted Wright’s foot to try to flip him over. Officer Cahoon testified he turned Wright’s head to make eye contact with him and was not “wrenching his neck or trying to cause pain.” (*Id.* at 142.) Officer Wallace testified Wright continued to resist until he was handcuffed, at which point the officers “backed off.” (*Id.* at 143.) In light of the officers’ uncertainty whether Wright was armed, the dangerous car chase, and Wright’s continued resistance despite a variety of tactics to subdue him, we cannot say the officers’ actions were unreasonable. *Cf. Sapen v. State*, 869 N.E.2d 1273, 1280 (Ind. Ct. App. 2007) (finding excessive use of force where officer’s own testimony established he continued to use force after defendant was already debilitated by pepper spray).

Affirmed.

KIRSCH, J., and DARDEN, J., concur.