

STATEMENT OF THE CASE

Appellant-Defendant, Jason Dixon (Dixon), appeals his convictions for two counts of resisting law enforcement, as Class D felonies, Ind. Code § 35-44-3-3.

We affirm in part and reverse in part.

ISSUES

Dixon raises two issues, which we restate as follows:

- (1) Whether the State presented evidence sufficient to prove beyond a reasonable doubt that Dixon knowingly resisted law enforcement; and
- (2) Whether his two convictions for resisting law enforcement were for the same continuing crime.

FACTS AND PROCECURAL HISTORY

On April 1, 2008, Indianapolis Metropolitan Police Officers Ronald Rehmel (Officer Rehmel) and Brandon Shirey (Officer Shirey) were dispatched to an apartment at 6037 Windsor Drive, in Marion County, Indiana, to investigate a disturbance involving Dixon. While *en route*, the Officers determined that Dixon had an outstanding warrant for his arrest. When the Officers arrived, Dixon's sister answered the door, stepped back, and allowed them to enter the apartment. A man, who was in fact Dixon, appeared walking out of the kitchen with a plate of food. Officer Shirey asked him who he was, and he said "Charles Dixon." (Transcript p. 32). However, the man matched a description of Jason Dixon contained in the warrant and Officer Shirey maneuvered to place handcuffs on him.

Dixson became angry at his sister and moved toward her. Officer Rehmel stepped between Dixson and his sister and Dixson “punt style . . . kicked [Officer Rehmel] directly in the groin” causing Officer Rehmel to lose his breath from the pain. (Tr. p. 36). Officer Shirey grabbed Dixson and took him to the ground. Dixson landed on top of Officer Shirey and struggled, attempting to get free. Once Officer Rehmel gathered himself, he told Officer Shirey to let Dixson go, pulled Dixson up, and applied a knee strike to Dixson causing him to go to the ground. Officer Rehmel restrained Dixson’s torso, and Officer Shirey attempted to restrain Dixson’s legs, but Dixson kicked Officer Shirey several times. Officer Rehmel removed Dixson’s belt and Officer Shirey wrapped it around Dixson’s ankles to get control of his feet.

The Officers called for backup and a paddy wagon to transport Dixson. While waiting for backup to arrive, Dixson repeatedly banged his head on the ground, “said he was swallowing dope and that . . . he was going to choke and die.” (Tr. p. 44). Dixson also said that he was HIV positive and tried to spit at the Officers at times. Other officers arrived, and four officers together carried Dixson downstairs, while he struggled. Once downstairs, Dixson was placed on a gurney. A crowd began to gather and Dixson screamed that the Officers had used racial slurs, but they had not. Dixson informed medical personnel that he had taken PCP and provided other appropriate information when asked.

On April 4, 2008, the State filed an Information charging Dixson with two counts of Class D felony battery on an officer, I.C. § 35-42-2-1, and two counts of Class D felony resisting law enforcement, I.C. § 35-44-3-3. After proceedings to determine Dixson’s

competency to stand trial, the trial court conducted a jury trial on June 17, 2009. At the close of evidence, the jury found Dixson guilty of all four counts. On July 8, 2009, the trial court conducted a sentencing hearing, wherein it merged the battery counts into the resisting law enforcement counts and sentenced Dixson to 1095 days, or three years, on each conviction for resisting law enforcement, to be served concurrently in the Marion County Community Corrections program.

Dixson now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Dixson argues that the State presented insufficient evidence to prove beyond a reasonable doubt that he knowingly resisted law enforcement. Specifically, Dixson contends that: (1) Dixson was never informed that he was being placed under arrest; and (2) during the acts for which he was convicted of resisting, Dixson was experiencing a “mental episode” which prevented him from being aware of what he was doing. (Appellant’s Brief p. 14).

Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. We will consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. A conviction may be based upon circumstantial evidence alone. Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense.

Perez v. State, 872 N.E.2d 212-13 (Ind. Ct. App. 2007), *trans. denied* (citations omitted).

A person resists law enforcement when he “knowingly or intentionally.”

- (1) forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of the officer's duties;
- (2) forcibly resists, obstructs, or interferes with the authorized service or execution of a civil or criminal process or order of a court; or
- (3) flees from a law enforcement officer after the officer has, 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.

I.C. § 35-44-3-3(a). The offense is a Class D felony if the defendant, among other things, “inflicts bodily injury on or otherwise causes bodily injury to another person.” I.C. § 35-44-3-3(b). “A person engages in conduct ‘intentionally’ if, when he engages in the conduct, it is his conscious objective to do so,” and “[a] person engages in conduct ‘knowingly’ if, when he engages in the conduct, he is aware of a high probability that he is doing so.” I.C. § 35-41-2-2(a) and (b). Thus, the minimum degree of culpability which the State must prove to sustain a resisting conviction is “knowingly.” *McCaffrey v. State*, 523 N.E.2d 435, 436 (Ind. Ct. App. 1988). Whether a defendant’s “intoxication so impaired his mental faculties that he did not act knowingly is a question for the trier of fact.” *Id.* Knowledge and intent are mental states of the actor; and, therefore, the trier of fact must resort to reasonable inferences based on the examination of the surrounding circumstances to determine the existence of those culpability standards. *Slone v. State*, 912 N.E.2d 875, 880 (Ind. Ct. App. 2009), *trans. denied.*

First, we note that there is no requirement that police officers inform a person that he is under arrest before that person can legally resist. Only when a person “flees” law

enforcement is there a requirement that law enforcement make some form of outward communication with a person before that person can resist. *See* I.C. § 35-44-3-3(a)(3). The State did not advance a theory that Dixon's resistance was by fleeing, but rather alleged and presented evidence that Dixon forcibly resisted, obstructed, or interfered with a law enforcement officer while that officer was lawfully engaged in the execution of his duties pursuant to I.C. § 35-41-3-3(a)(1).

The evidence which the State presented that Dixon knowingly resisted includes the following: (1) Dixon's actions indicated that he had the mental capacity to blame his sister for the police officers showing up at the apartment; (2) once the officers gained control of Dixon's body, he thought of other ways to lash out at the officers such as spitting at them and saying that he was HIV positive; (3) Dixon played to the crowd once the police officers got him outside; and (4) Dixon responded appropriately when questioned for potential treatment. We conclude that the trier of fact could reasonably infer from this evidence that Dixon knowingly resisted law enforcement.

II. *Single Offense or Multiple Offenses*

Dixon also contends that his conduct of resisting was a single continuing act of criminal conduct for which he can only be convicted once. Specifically, he argues that, although two officers were injured by his conduct, the intent of the resisting law enforcement statute is to prevent interferences with public administration, and his conduct was a continuing interference no matter how many officers were injured.

In *Armstead v. State*, 549 N.E.2d 400, 401 (Ind. Ct. App. 1990), the defendant was confronted by three police officers, began yelling obscenities at them, and assumed a pugilistic stance. Eventually, the officers informed the defendant that he was being placed under arrest and approached him to place him in handcuffs. *Id.* The defendant struck one officer in the nose, causing it to break, and struggled with the two other officers causing them injuries as well. *Id.* The defendant was tried and convicted of three counts of resisting law enforcement, among other things. *Id.*

In analyzing the propriety of the multiple resisting convictions in light of the defendant's conduct, we made clear that:

The offenses set forth in title 35, art. 44, ch. 3 do not constitute crimes against the person. Rather, they are interferences with governmental operations constituting offenses against public administration. A person who violates Ind. Code 35-44-3-3 harms the peace and dignity of the State of Indiana and its law enforcement authority. The harm caused by one incident is the same regardless of the number of police officers resisted.

Id. Invoking this reasoning, we affirmed only one of the defendant's convictions for resisting, and reversed the other two. *Id.* at 402. Similarly, in *Touchstone v. State*, 618 N.E.2d 48, 49 (Ind. Ct. App. 1993), we reversed two of three convictions for resisting where the defendant had forcibly resisted, stopped while he was being transported to the police station, but then began resisting again upon arrival. In doing so, we relied upon the proposition from *Armstead* that resisting "is not a crime against the person, but against lawful authority." *Id.*

That being said, “each of the several acts under I.C. § 35-44-3-3 constitutes a separate offense of resisting law enforcement.” *Williams v. State*, 755 N.E.2d 1183, 1185 (Ind. Ct. App. 2001) (citing *Armstead*, 549 N.E.2d at 401). Therefore, where a defendant has both fled law enforcement officers and also forcibly resisted them as well, it has been held that he can be convicted of multiple counts of resisting. *See id.*; *see also Pettit v. State*, 439 N.E.2d 1175, 1178-79 (Ind. Ct. App. 1982); *Williams*, 755 N.E.2d at 1186; *Deshazier v. State*, 877 N.E.2d 200, 210 (2007), *trans. denied*.

Here, the State presented evidence that Dixon forcibly resisted both Officers Rehmel and Shirey, and possibly other officers that helped carry Dixon downstairs and outside of the apartment building. Consistent with this evidence, both counts of resisting which the State charged were pursuant to the language in I.C. § 35-44-3-3(a)(1). Therefore, in line with *Armstead*, we conclude that Dixon’s conduct was one continuing act of resisting law enforcement for which Dixon could only be once convicted.¹ Thus, we reverse one of Dixon’s convictions for resisting law enforcement.

CONCLUSION

Based on the foregoing we conclude that the State presented sufficient evidence from which the jury could reasonably infer that Dixon knowingly or intentionally resisted law

¹ The State urges us to apply *Whaley v. State*, 843 N.E.2d 1, 15 (Ind. Ct. App. 2006), *trans. denied*, wherein we determined that a defendant’s act of laying on his arms to prevent officers from handcuffing him, which resulted in two officers injuring themselves while forcing the defendant’s arms to his backside, could sustain two convictions for resisting because two officers were injured. The *Whaley* court based its decision on double jeopardy considerations, and we agree with Dixon that it is inconsistent with the precedent including cases such as *Armstead*. We choose to follow the reasoning relied upon in *Armstead*.

enforcement, but that Dixson's conduct constituted one continuing act of resisting for which he could only be convicted once.

Affirmed in part and reversed in part.

CRONE, J., concurs.

VAIDIK, J., concurs in result with separate opinion.

**IN THE
COURT OF APPEALS OF INDIANA**

JASON DIXSON,)	
)	
Appellant-Plaintiff,)	
)	
vs.)	No. 49A02-0908-CR-722
)	
STATE OF INDIANA,)	
)	
Appellee-Defendant.)	
)	

VAIDIK, Judge, concurring in result.

I agree with the general principle that the offense of resisting law enforcement is not an offense against the person but rather an interference with governmental operations that constitutes an offense against public administration. *See Armstead v. State*, 549 N.E.2d 400, 401 (1990). Therefore, if there is only one incident, then a defendant can be convicted of only one count of resisting law enforcement, regardless of the number of police officers involved. *Id.* at 402.

Here, Dixon was found guilty of two counts of resisting law enforcement, which were elevated to Class D felonies based upon injuries to two police officers. He was also

found guilty of two counts of Class D felony battery on an officer based upon injuries to those same two police officers. The trial court found that sentencing Dixson for all four convictions would constitute double jeopardy and therefore merged the battery convictions into the resisting law enforcement convictions and sentenced him for resisting law enforcement. *See Green v. State*, 856 N.E.2d 703, 704 (Ind. 2006) (“[A] merged offense for which a defendant is found guilty, but on which there is neither a judgment nor a sentence, is ‘unproblematic’ as far as double jeopardy is concerned.”). However, had the trial court simply merged the resisting law enforcement convictions into the battery convictions, then Dixson could properly stand convicted of two Class D felonies for this continuing incident. Because the majority is reversing one of Dixson’s resisting law enforcement convictions, I write separately to point out that the jury’s guilty finding on the related battery charge still remains, and judgment of conviction can now properly be entered upon it. *See Vaughn v. State*, 782 N.E.2d 417, 422 (Ind. Ct. App. 2003), *trans. denied*.