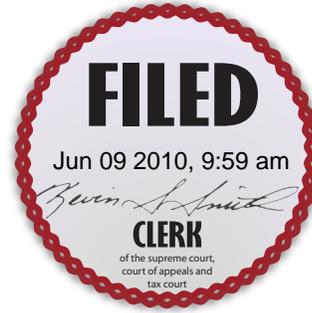


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JAMES WATKINS,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-0911-CR-1058
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert R. Altice, Jr., Judge
Cause No. 49G02-0905-FC-51102

June 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

James Watkins appeals his conviction of resisting law enforcement, as a class D felony.

We affirm.

ISSUE

Whether sufficient evidence supports the conviction.

FACTS

On the afternoon of May 25, 2009, four men were gambling in a dice game at Marcus Gladney's home on Draper Street – Gladney, Sylvester Jones, Eric Hutchinson, and Hutchinson's brother "Juicy." After the game ended and Jones went home, he discovered that his wallet containing \$600.00 in winnings was missing. Jones drove back to Gladney's, Gladney said he had not seen Jones' wallet, and they "had words." (Tr. 119). Jones drove home and searched again for his wallet. Jones then recruited his brother Ronnie and Watkins, and drove them in his white Cadillac to Draper Street. When they saw Hutchinson walking on the street, the three "got out" of the car and "beat up" Hutchinson, (tr. 120, 135); but Jones' wallet remained missing.

As Jones then drove his Cadillac northbound on Draper, he heard a horn and saw Gladney approaching from behind in his tow truck. Gladney pulled the truck around Jones' Cadillac, blocking it. While the truck was still running and in gear, Gladney jumped from the truck and came to Jones' driver's side window. Jones testified that Gladney "pulled" a gun from his overalls and said, "f-you and your wallet"; that Jones reached out his car window and knocked the gun from Gladney's hand; that the gun hit

the ground and its magazine fell out; that as Gladney bent down to pick up the gun, Jones exited his car; that Gladney grabbed the gun and ran around the car toward a nearby field as he tried to reassemble the gun, and his brother and Watkins exited the car; when Jones and his brother approached, Gladney “back[ed] away . . . trying to load the gun” and then pointed it at Jones, causing Jones and his brother to run back to the car. (Tr. 124, 139). Jones also testified that when he and his brother jumped in the car, Jones put it in gear, automatically locking its doors, and that Watkins was then unable to reenter the car and “jumped in the tow truck,” which was “still running.” (Tr. 129).

A witness, Phillip Austin, testified that he heard the tow truck hit a tree; saw Gladney exit the tow truck and run into the field; and saw two men run from the Cadillac into the field chasing after Gladney. He further testified that he saw Gladney “face[]” the men and “point[] something at them,” something that “looked like a gun.” (Tr. 87, 88). According to Austin, the men pursuing Gladney then “stopped” and ran quickly back to the street, whereupon one man entered the Cadillac and drove it away, “and the other hopped in the wrecker.” (Tr. 89, 90).

As the tow truck began moving forward with Watkins at the wheel, Gladney jumped on the running board alongside the driver’s door. The truck continued to move, and Austin saw Watkins and Gladney “tugging back and forth with something between the two of them.” (Tr. 91). Then the driver’s side door of the truck opened, Gladney fell, and the rear wheels of the truck ran over him. Watkins continued driving the truck northbound on Draper, and the police were called.

Within minutes, Officer Benjamin Owens arrived at the scene and found Gladney lying on his back in the street, screaming in pain and bleeding profusely. Gladney “told [the officer] that he got ran over,” and that the man “stole [his] truck.” (Tr. 70, 72). Gladney described the distinctively painted tow truck to the officer, and the description was broadcast.

Officer Christopher Nieves was in the area when he heard the broadcast. As he was westbound at the traffic light at the intersection of Raymond and Shelby Streets, he looked to the south¹ and saw a red and white tow truck speeding northbound on Shelby. As the truck crossed through the intersection, Watkins looked directly at the officer, and the officer “activated [his] lights and [his] sirens and [he] pulled behind the truck.” (Tr. 15). Nieves heard “the truck engine rev at a high rate and it just took off,” continuing northbound on Shelby. (Tr. 16). Watkins turned left from Shelby onto Legrande, and then he made a righthand turn on Barth. Seeing that Barth was a dead end street, Watkins turned the truck into an alley -- which was fenced in and had no exit. Watkins stopped the truck. Nieves ordered Watkins to exit the truck, but he did not comply immediately. After waiting a minute, Nieves approached the tow truck with his weapon drawn and physically opened the door. Watkins then exited the truck. When Watkins was searched incident to his arrest, a small bag of cocaine was found on his person.

On May 27, 2009, the State charged Watkins with criminal recklessness, as a class C felony; auto theft, both as a class D felony and enhanced to a class C felony based on a

¹ According to the map of the area admitted at trial, the Draper Street site of the incident lay several blocks to the south and east of the Raymond and Shelby intersection.

previous conviction; resisting law enforcement while operating a vehicle, as a class D felony; possession of cocaine, as a class D felony; and failure to stop after a collision with an unattended vehicle, as a class B misdemeanor. Subsequently, the State also charged Watkins with reckless homicide,² and it added an allegation that he was an habitual offender.

Watkins was tried to the bench on September 21, 2009. He stipulated to his possession of cocaine. The trial court found Watkins guilty of two class D felonies: resisting law enforcement and possession of cocaine.³ Watkins admitted to the habitual offender allegation. He now appeals the conviction of resisting law enforcement.

DECISION

When reviewing the sufficiency of the evidence to support the conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It 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. 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 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 and citations omitted).

Watkins argues that there is insufficient evidence to sustain his conviction for resisting law enforcement because he (1) had “just been through a terrifying, life-

² Gladney died of his injuries on May 28, 2009, three days after the incident.

³ Noting evidence that Gladney was armed and had pointed a gun at Watkins, and the defense of necessity, the trial court found Watkins not guilty of the theft, criminal recklessness, and reckless homicide; and noting a lack of evidence in that regard, found him not guilty of the failure to stop offense.

threatening ordeal,” (2) stopped his vehicle within a few blocks of Officer Nieves’ activation of his lights and sirens,⁴ and (3) exited the truck “without resistance.” Watkins’ Br. at 8,9. We are not persuaded.

Indiana law provides that a person commits resisting law enforcement when he “knowingly or intentionally . . . flees from a law enforcement officer after the officer has, by visible or audible means, including operation of the officer’s siren or emergency lights, identified himself or herself and ordered the person to stop.” Ind. Code § 35-44-3-3(a)(3). According to this provision, the “operation of the officer’s siren or emergency lights” is the means of communicating to the person both the officer’s “identi[fication]” as an officer and the officer’s “order to stop.” *Spears v. State*, 412 N.E.2d 81, 82 (Ind. Ct. App. 1980). Resisting law enforcement is a class D felony when the person uses a vehicle in the commission of the offense. I.C. § 35-44-3-3(b)(1)(A).

Thus, the State was required to prove beyond a reasonable doubt that Watkins knowingly or intentionally fled Officer Nieves after Nieves, by visible or audible means, identified himself to Watkins and ordered him to stop. Here, it is undisputed that Nieves identified himself and ordered Watkins to stop by activating his emergency lights and siren. It is also undisputed that thereafter, Watkins continued driving for several blocks, *i.e.* “knowingly or intentionally . . . “fle[d].” I.C. § 35-44-3-3(a)(3).

Watkins offers no authority for the proposition that the distance of his flight is dispositive. Further, evidence at trial supported the inference that Watkins was not from

⁴ Throughout his brief, Watkins asserts that he only traveled “two blocks” before stopping. Watkins’ Br. at 6, 9, 10. At trial, his counsel indicated that he stopped after “three blocks.” Tr. 25, 150.

the neighborhood where he was ordered him to stop; hence, the fact that he stopped after several blocks may reasonably be inferred to be the result of his having made turns that led him to a place from which there was no exit.

As for Watkins' argument that his failure to stop when ordered is excused by the facts of previous events, there was no evidence that Gladney posed any further threat to Watkins after he had fallen from and been run over by his own truck several blocks away. Moreover, the map admitted at trial reflects that Watkins had traveled some distance away when the officer ordered him to stop.

Finally, we find of no moment Watkins' assertion that after bringing the truck to a stop and initially failing to comply with the order to exit the truck, when the officer physically opened the truck's door, he exited "without resistance." (Watkins' Br. at 8). As indicated in the reasoning above, by the time he exited the truck, he had already committed the class D felony offense of resisting law enforcement.

Watkins' arguments asks that we reweigh the evidence, which we cannot do. We find sufficient evidence to support Watkins' conviction of resisting law enforcement, as a class D felony.

Affirmed.

BAKER, C.J., and CRONE, J., concur.