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IN THE
COURT OF APPEALS OF INDIANA

SYBRON PINKSTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-1104-CR-167
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Wendy Davis, Judge
Cause No. 02D04-1009-FD-873

DECEMBER 7, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Sybron Pinkston appeals his convictions of battery, a Class D felony, Ind. Code § 35-42-2-1 (2009), and resisting law enforcement, a Class D felony, Ind. Code § 35-44-3-3 (2010).

We affirm.

ISSUES

Pinkston raises two issues for our review, which we restate as:

I. Whether the State presented sufficient evidence to support Pinkston's conviction of battery.

II. Whether the State presented sufficient evidence to support Pinkston's conviction of resisting law enforcement.

FACTS AND PROCEDURAL HISTORY

On July 8, 2010, Pinkston was in the Allen County Jail and was kicking his cell door during roll call. Officer Minear, who was conducting roll call, asked who was kicking, and Pinkston responded, "I am, bitch." Tr. p. 16. When Officer Minear asked Pinkston why he was kicking, Pinkston answered, "Bitch, I need to go see a nurse." *Id.* Officer Minear informed Pinkston that he would address the situation when he finished roll call. Following roll call, Officer Minear returned to Pinkston's cell and entered. As Officer Minear looked down at the paper in his hand, he was hit in the face. In response to Office Minear's call for assistance, other officers arrived at the cell, including Officer Malloris. Pinkston was lying face down on a mattress on the floor of the cell and when Officer Malloris instructed him to stand up, he said, "F*** you." *Id.* at 49. Pinkston was

ordered to put his hands behind his back, but he refused to do so. Officer Malloris was able to gain control of Pinkston's right wrist, but Pinkston had tucked his left arm completely underneath his body and refused to release it. Pinkston struggled against several officers until, following a warning, one of the officers tased Pinkston, at which time he released his left arm and was handcuffed. Based upon this incident, Pinkston was charged with two counts of battery and two counts of resisting law enforcement. At trial, the State dismissed one battery count and one resisting count, and a bench trial was convened on the remaining two counts. Pinkston was found guilty of both counts and was sentenced to three years on each conviction, to be served concurrently to each other and consecutively to a prior sentence. It is from these convictions that Pinkston appeals.

DISCUSSION AND DECISION

I. SUFFICIENCY OF EVIDENCE – BATTERY

Pinkston first contends that the State failed to present evidence sufficient to sustain his conviction of battery. Specifically, he argues that the evidence was insufficient to show that it was he who struck Officer Minear.

When reviewing claims of insufficiency of the evidence, we neither weigh the evidence nor judge the credibility of the witnesses. *Caruthers v. State*, 926 N.E.2d 1016, 1022 (Ind. 2010). If there is substantial evidence of probative value from which a reasonable trier of fact could find guilt beyond a reasonable doubt, we will affirm the conviction. *Id.*

The evidence in this case reveals that Pinkston was using foul language and telling Officer Minear that he needed to see the nurse. When Officer Minear entered the cell and looked down at his paper, he was struck in the face. Officer Minear testified at trial that when he entered the cell, Pinkston was standing in the cell, and his cellmate, Cardia Senter, was at the back of the cell. Officer Minear further testified there was not enough room for Senter to pass Pinkston to get to Minear "without making a bunch of commotion," Tr. p. 22, and he heard nothing in the way of movement or someone walking prior to being hit. Additionally, he testified that less than a second passed between the time he looked down and the time he was hit and that Pinkston was the only one who could have hit him in that short amount of time.

Officer Malloris testified that when he arrived at the cell, he asked Senter what had happened. Senter responded, "Wasn't me." *Id.* at 48. Senter also testified at trial, and, in response to the question of whether he hit Officer Minear that day, he responded, "No." *Id.* at 80. Moreover, Pinkston testified on his own behalf at trial. On cross-examination, he was asked, "And Cardia Senter didn't hit [Minear], is that correct?" *id.* at 119, to which he responded, "I guess he didn't." *Id.* Finally, the following colloquy took place between the trial judge and Pinkston at the end of Pinkston's trial testimony:

> COURT: Just so I understood your - your answer, Mr. Pinkston. When the prosecutor asked you that Senter didn't hit him, your response was, no, I guess not? What was your response?
>
> MR. PINKSTON: No, he didn't.
>
> COURT: Okay, so Senter didn't hit him?

MR. PINKSTON: I don't think so.

Id.

Although the evidence identifying Pinkston as the perpetrator is circumstantial, circumstantial evidence is sufficient to sustain a conviction. *Green v. State*, 808 N.E.2d 137, 138 (Ind. Ct. App. 2004). Yet, even by Pinkston's own account of the event, he was the person that hit Officer Minear. Pinkston testified that Senter, the only other person in the room at the time Officer Minear was hit, did not hit Officer Minear. Therefore, we find the evidence sufficient to support Pinkston's conviction of battery.

II. SUFFICIENCY OF EVIDENCE – RESISTING

Pinkston also claims that the State's evidence was insufficient to support his conviction for resisting law enforcement. In order to convict Pinkston of resisting law enforcement, the State had to prove beyond a reasonable doubt that (1) Pinkston (2) knowingly or intentionally (3) forcibly resisted, obstructed or interfered (4) with Officer Malloris, a law enforcement officer (5) while Officer Malloris was lawfully engaged in the execution of his duties and (6) inflicted on or otherwise caused bodily injury to Officer Malloris. *See* Ind. Code § 35-44-3-3(a)(1), (b)(1)(B); Appellant's App. p. 13. Pinkston asserts that the State failed to sufficiently show that he forcibly resisted and that he caused injury to Officer Malloris.

The evidence at trial disclosed that when Officer Malloris arrived at the cell, Pinkston was face down on a mattress on the floor. He told Pinkston to stand up, and

Pinkston responded, "F*** you." Tr. p. 49. Officer Malloris then got down on the mattress and attempted to handcuff Pinkston, but the officer was only able to cuff Pinkston's right hand because he tucked his left arm completely underneath his body and would not release it. At that time, other officers arrived in the cell and told Pinkston multiple times to stop resisting. The officers continued to tell Pinkston to give them his left arm, but he refused. Officer Malloris then used a "hammer fist" between Pinkston's shoulder blades to get him to comply with the officer's request, but Pinkston still refused. *Id.* at 54. Officer Malloris put his knee in Pinkston's shoulder, which also failed to gain Pinkston's compliance with Officer Malloris' request. Another officer, Sergeant Oetinger, had warned Pinkston that if he did not give up his left arm, he would be tased. A third officer, Officer Goble, testified that when the officers were attempting to gain Pinkston's compliance with their request, Pinkston was thrashing his head and upper body back and forth. Yet another officer, Officer Crouse, testified she was pulling "with all [her] might" on Pinkston's arm, but he would not release it. *Id.* at 74. Finally, Officer Malloris applied pressure to pressure points below Pinkston's jaw, and Sergeant Oetinger tased Pinkston. Pinkston then released his arm.

While refusing to present one's arms for cuffing, without more, is not forcible resistance, the "stiffening" of one's arms when an officer grabs hold to position them for cuffing would suffice. *Graham v. State*, 903 N.E.2d 963, 966 (Ind. 2009). The facts in the present case show that Pinkston was doing more than simply refusing to produce his left hand for cuffing when ordered to do so. He forcibly resisted the officers' attempts to

release his left arm from beneath his body and struggled with the officers. Accordingly, we conclude there is sufficient evidence to show that Pinkston acted with the requisite force in resisting Officer Malloris and the other officers in the execution of their duties. *See Lopez v. State*, 926 N.E.2d 1090, 1093-94 (Ind. Ct. App. 2010) (holding evidence sufficient to show defendant acted with requisite force to support conviction of resisting law enforcement where defendant refused to stand when ordered to do so, pulled away when officers attempted to pull him up, refused to put his hands behind his back, and pulled away and struggled with officers when they attempted to put him in handcuffs eventually ending up on ground where defendant put his hands beneath his body and would not release them until he was tased), *trans. denied*. Moreover, to the extent Pinkston argues that he was merely passive-resistant in not complying with the officers' verbal commands, we may not reweigh the evidence. *See Caruthers*, 926 N.E.2d at 1022.

Once Pinkston was restrained, Officer Malloris noticed a dull pain in his left thumb. Following x-rays, he was diagnosed as having a severely strained thumb. At trial he was asked at what point in time his thumb was injured, and he responded, "It was when I was attempting to handcuff inmate Pinkston. He was pulling away and the thumb got caught in the handcuff and when he pulled, it pulled the thumb . . ." Tr. p. 57. This evidence is sufficient to show that Pinkston caused bodily injury to Officer Malloris so as to support Pinkston's conviction of resisting law enforcement as a Class D felony.

CONCLUSION

Based upon the foregoing discussion and authorities, we conclude that the State presented sufficient evidence to sustain Pinkston's convictions of battery and resisting law enforcement.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.