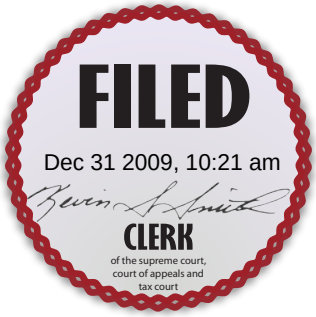
Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE
COURT OF APPEALS OF INDIANA

WILLIE E. JONES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 89A04-0908-CR-481
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WAYNE SUPERIOR COURT
The Honorable Darrin M. Dolehanty, Judge
Cause No. 89D03-0903-CM-315

DECEMBER 31, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

Willie Jones appeals his conviction in a bench trial of resisting law enforcement, a class A misdemeanor. We affirm.

The sole issue for our review is whether there is sufficient evidence to support his conviction.

At approximately 5:00 p.m. on March 2, 2009, Jones, his wife and several others were drinking alcohol at the Jones' Wayne County home. Jones was intoxicated and began arguing with his daughter. Jones' wife called the police because she wanted everyone out of the house.

When police arrived at the home, Jones was angry and did not understand why the officers were there. His granddaughter, Amber, told police that she and Jones had been arguing and that Jones pushed her. She was not injured and said she just wanted to go to the basement and be left alone because she and her mother had no other place to go.

The officers believed they had the situation under control. As they were about to leave, everyone began arguing again. When Officer Alysha Tonuc turned around, she saw Jones use both his hands to push Amber into the wall in the living room, which caused Amber to fall.

The officers decided to arrest Jones for battery. When they attempted to handcuff him, he fell to the ground due to his intoxication. Once on the ground, Jones refused to give the officers his right arm. Jones pulled away, kicked his feet and kept holding his right arm underneath him while cursing the officers. Eventually, Jones was subdued.

Jones was subsequently convicted of battery as a class B misdemeanor and resisting law enforcement. He appeals the resisting law enforcement conviction. His sole argument is that there is insufficient evidence to support his conviction. Specifically, Jones contends that there is insufficient evidence that he forcibly resisted the officers.

When reviewing a conviction to determine the sufficiency of the evidence, we will not reweigh the evidence or assess the credibility of witnesses. *Brasher v. State,* 746 N.E.2d 71, 72 (Ind. 2001). Instead, we review only the evidence favorable to the decision together with the reasonable inferences that may be drawn therefrom. *Id.* We will affirm the conviction if there is probative evidence from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

Indiana Code Section 35-44-3-3 provides that a defendant commits the offense of resisting law enforcement when he 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. An individual forcibly resists when strong, powerful, and violent means are used to evade a law enforcement official's rightful exercise of his duties. *Graham v. State,* 903 N.E.2d 963, 965 (Ind. 2009). While forcible resistance does not include all actions that are non-passive, it need not rise to the level of "mayhem." *Id.*

Here, when the police officers attempted to handcuff Jones, he fell to the ground due to his intoxication. He kept his right arm under his body and resisted attempts to remove it. He pulled away, kicked his feet, cursed the officers and kept holding his arm

beneath his body. This evidence is sufficient to prove that Jones forcibly resisted the officers and to support his conviction. *See Johnson v. State*, 833 N.E.2d 516, 518-19 (Ind. Ct. App. 2005) (finding sufficient evidence of forcible resistance where Johnson turned away from officers and pushed them away with his shoulders as they attempted to search him and "stiffened up," requiring the officers to use force to place him inside the transport vehicle).

Affirmed.

KIRSCH, J., and CRONE, J., concur.