

William C. Beverly appeals his convictions for battery as a class A misdemeanor¹ and resisting law enforcement as a class D felony.² Beverly raises two issues, which we restate as:

- I. Whether the jury's verdict of guilty of the lesser included offense of battery as a class A misdemeanor rather than battery as a class D felony is inconsistent with its verdict of guilty of resisting law enforcement as a class D felony; and
- II. Whether the evidence is sufficient to sustain his conviction for resisting law enforcement as a class D felony.

We affirm.

The relevant facts follow. On August 25, 2005, Evansville Police Officer Brian Talsma was attempting to serve an arrest warrant on Germaine Vaughn at the Roadside Inn hotel. Upon arriving at the hotel, Officer Talsma saw Beverly exit Vaughn's hotel room. Officer Talsma approached Beverly and asked if Vaughn was in the hotel room. Beverly confirmed that Vaughn was in the room but became uncooperative when Officer Talsma asked if Beverly had bought or used drugs in the hotel room. When Officer Talsma said that he wanted to pat Beverly down, Beverly swung a metal cane at Officer Talsma and "drove his shoulder into [Officer Talsma's] mid section and drove [the officer] back onto a parked car." Transcript at 78. Officer Talsma and Beverly then began to fight, and after twenty to thirty seconds of fighting, Officer Talsma released his

¹ Ind. Code § 35-42-2-1 (Supp. 2005).

² Ind. Code § 35-44-3-3 (2004) (subsequently amended by Pub. L. No. 143-2006, § 2 (eff. July 1, 2006)).

K-9 by remote control. The K-9 bit Beverly several times as Beverly hit Officer Talsma and attempted to grab his gun. Officer Talsma, the K-9, and two other officers eventually got Beverly under control. Officer Talsma suffered scrapes on his elbows, scrapes on one knee, and a bruise to his back.

The State charged Beverly with battery resulting in bodily injury as a class D felony, resisting law enforcement as a class D felony, and being an habitual offender.³

The information for battery resulting in bodily injury as a class D felony provided:

[O]n or about August 25, 2005, [Beverly] did knowingly touch Brian Talsma, a law enforcement officer with the Evansville Police Department, in a rude, insolent, or angry manner by pushing the said officer into a parked vehicle, while the said officer was engaged in execution of his official duties, and which did result in bodily injury to the said officer

Appellant's Appendix at 16. The information for resisting law enforcement as a class D felony provided:

[O]n or about August 25, 2005, [Beverly] did knowingly forcibly resist, obstruct or interfere with Brian Talsma, a law enforcement officer with the Evansville Police Department, while said officer was lawfully engaged in his duties and the said [Beverly] inflicting bodily injury on the said Brian Talsma

Id.

After a jury trial, the jury found Beverly guilty of resisting law enforcement as a class D felony and guilty of battery as a class A misdemeanor, a lesser included offense of battery as a class D felony. Beverly pleaded guilty to being an habitual offender. The

³ Ind. Code § 35-50-2-8 (Supp. 2005).

trial court sentenced Beverly to an aggregate sentence of six years in the Indiana Department of Correction.

I.

The first issue is whether the jury's verdict of guilty of the lesser included offense of battery as a class A misdemeanor rather than battery as a class D felony is inconsistent with its verdict of guilty of resisting law enforcement as a class D felony. When this Court reviews a claim of inconsistent jury verdicts, "we will take corrective action only when the verdicts are extremely contradictory and irreconcilable." Powell v. State, 769 N.E.2d 1128, 1131 (Ind. 2002), reh'g denied. A jury's verdict may be inconsistent or even illogical but nevertheless permissible if it is supported by sufficient evidence. Id. In resolving such a claim, we neither interpret nor speculate about the thought process or motivation of the jury in reaching its verdict. Id.

The offense of battery is governed by Ind. Code § 35-42-2-1, which provides:

- (a) A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery, a Class B misdemeanor. However, the offense is:
 - (1) a Class A misdemeanor if:
 - (A) it results in bodily injury to any other person;
 - (B) it is committed against a law enforcement officer or against a person summoned and directed by the officer while the officer is engaged in the execution of his official duty;
 - (2) a Class D felony if it results in bodily injury to:
 - (A) a law enforcement officer or a person summoned and directed by a law enforcement officer while the officer is engaged in the execution of his official duty;

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The trial court instructed the jury regarding both battery as a class D felony and battery as a class A misdemeanor with the difference between the two instructions being the lack of bodily injury in the class A misdemeanor instruction. Additionally, the charging information was read to the jury and alleged that Beverly had touched Officer Talsma “in a rude, insolent, or angry manner by pushing the said officer into a parked vehicle” and that the touching resulted in bodily injury. Appellant’s Appendix at 16. The jury found Beverly guilty of battery as a class A misdemeanor.

The resisting law enforcement as a class D felony offense is governed by Ind. Code § 35-44-3-3, which, at the time of Beverly’s offense, provided:

- (a) A person who 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 his duties as an officer;

* * * * *

commits resisting law enforcement, a Class A misdemeanor, except as provided in subsection (b).

- (b) The offense under subsection (a) is a:
 - (1) Class D felony if:

* * * * *

- (A) while committing any offense described in subsection (a), the person . . . inflicts bodily injury on another person

The trial court instructed the jury regarding both resisting law enforcement as a class D felony and the lesser included offense of resisting law enforcement as a class A misdemeanor with the difference between the two instructions being the lack of bodily injury in the class A misdemeanor instruction. Additionally, the charging information was read to the jury and alleged that Beverly knowingly forcibly resisted, obstructed or interfered with Officer Talsma while he was lawfully engaged in his duties and inflicted bodily injury on Officer Talsma. The jury found Beverly guilty of resisting law enforcement as a class D felony.

According to Beverly, these verdicts are inconsistent because the jury found no bodily injury associated with the battery charge but found bodily injury associated with the resisting law enforcement charge. As the State points out though, the battery charge specifically alleged bodily injury from Beverly pushing Officer Talsma into the parked car, while the resisting law enforcement charge alleged bodily injury from Beverly resisting Officer Talsma. Officer Talsma testified that he suffered scrapes to his knee and elbows during the fight with Beverly. However, his testimony was less clear about the source of his bruise on his back. He testified, “I think when we went into the car, it probably drove [my handcuff case] into my back” Transcript at 82. Based upon the differences in the evidence, the jury could have found that Officer Talsma suffered bodily injury during the resisting law enforcement but not during the battery. We conclude that the jury’s verdicts were not inconsistent. See, e.g., Carmona v. State, 827 N.E.2d 588,

594 (Ind. Ct. App. 2005) (holding that differing verdicts on the battery and resisting charges were not inconsistent).

II.

The next issue is whether the evidence is sufficient to sustain his conviction for resisting law enforcement as a class D felony. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id.

As noted above, to find Beverly guilty of resisting law enforcement as a class D felony, the State was required to prove that Beverly forcibly resisted, obstructed or interfered with Officer Talsma while Officer Talsma was lawfully engaged in his duties and that Beverly inflicted bodily injury on Officer Talsma. I.C. § 35-44-3-3. Beverly challenges only the sufficiency of the evidence to sustain a finding of bodily injury. “Bodily injury” is defined as “any impairment of physical condition, including physical pain.” Ind. Code § 35-41-1-4. Officer Talsma testified that he suffered scrapes to his knee and elbows during the fight with Beverly. This evidence is sufficient to support the bodily injury element of the offense, and evidence of probative value exists from which a reasonable jury could have found Beverly guilty beyond a reasonable doubt of resisting law enforcement as a class D felony. See, e.g., Parks v. State, 513 N.E.2d 170, 172 (Ind.

1987) (holding that evidence of cuts and scrapes on an officer's left hand incurred during a struggle with the defendant were evidence of bodily injury).

For the foregoing reasons, we affirm Beverly's convictions for battery as a class A misdemeanor and resisting law enforcement as a class D felony.

Affirmed.

SULLIVAN, J. and CRONE, J. concur