

Travis S. Chandler appeals his convictions of two counts of Class D felony battery on a law enforcement officer resulting in bodily injury¹ and one count of Class A misdemeanor resisting law enforcement.² He raises two issues for our review:

1. Whether the evidence is sufficient to support his battery convictions; and
2. Whether convictions of both Class D felony battery and Class A misdemeanor resisting law enforcement subjected him to double jeopardy.

We affirm.

FACTS AND PROCEDURAL HISTORY

On June 8, 2010, Chandler went to the house of his former girlfriend, Lori Hartsburg, and yelled into her window. She repeatedly asked him to leave and, when he did not, she called the police. When Deputies Pierce and Inman arrived, Chandler was in the front yard yelling at Hartsburg. Chandler walked toward his car, ignoring the deputies' orders to stop. He removed something from his car and walked back towards Hartsburg's house.

Deputy Inman asked Chandler to stop and ordered Chandler to show him his hands. Chandler refused, and the deputies grabbed his wrists to detain him. Chandler jerked away and clenched his fists. Chandler wrestled with Deputy Pierce on the ground, during which Deputy Pierce sustained a cut on his forearm. The deputies twice applied a Taser to Chandler and, during a subsequent scuffle, Chandler twisted and sprained Deputy Inman's finger.

¹ Ind. Code § 35-42-2-1(a)(2)(A).

² Ind. Code § 35-44-3-3(a)(1).

Chandler was charged with Class C felony disarming a law enforcement officer,³ Class D felony operating a vehicle while a habitual traffic offender,⁴ Class A misdemeanor intimidation,⁵ Class A misdemeanor trespass,⁶ class B misdemeanor voyeurism,⁷ two counts of Class D felony battery upon a law enforcement officer resulting in injury, and Class A misdemeanor resisting law enforcement. A jury found Chandler guilty of all but voyeurism and disarming an officer. The court entered convictions on the remaining counts and ordered an aggregate sentence of four years.

DISCUSSION AND DECISION

1. Sufficiency of the Evidence

When reviewing the sufficiency of evidence to support a conviction, we consider only the probative evidence and reasonable inferences supporting the trial court's decision. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, and not ours, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* To preserve this structure, when we are confronted with conflicting evidence, we consider it most favorably to the trial court's ruling. *Id.* We affirm a conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* It is therefore not necessary that the evidence overcome

³ Ind. Code § 35-44-3-3.5(b).

⁴ Ind. Code § 9-30-10-16(a).

⁵ Ind. Code § 35-45-2-1(a)(2).

⁶ Ind. Code § 35-43-2-2(a)(2).

⁷ Ind. Code § 35-45-4-5(a)(2).

every reasonable hypothesis of innocence; rather, the evidence is sufficient if an inference reasonably may be drawn from it to support the trial court's decision. *Id.* at 147.

To convict Chandler of battery, the State had to prove he “knowingly or intentionally touche[d] another person in a rude, insolent, or angry manner.” Ind. Code § 35-42-2-1(a). The offense is a Class D felony if the act results in bodily injury to a law enforcement officer. Ind. Code § 35-42-2-1(a)(2)(A). Chandler argues the State did not prove the deputies' injuries “were the Result of an Affirmative Touching by Chandler and not Merely the Result of Incidental Contact During the Struggle.” (Br. of Appellant at 6) (capitalization in original). We disagree.

The State introduced evidence Deputy Pierce suffered a cut to his arm and Deputy Inman suffered a sprained finger. Deputy Pierce testified that after his first attempt to detain Chandler, “[w]e ended up going to the ground. We're rustling around with him. He's violently shoving us [sic] jerking away I, [sic] throwing elbows” (Tr. at 171-72.) Deputy Inman testified that, during a struggle, Chandler “grabbed my finger and twisted it or it got twisted in the middle of the fight.” (*Id.* at 259.) This evidence was sufficient to convict Chandler of two counts of Class D felony battery on a law enforcement officer resulting in bodily injury. *See, e.g., Parks v. State*, 513 N.E.2d 170, 172 (Ind. 1987) (“[Officer] Grose stated he received cuts and scrapes on his left hand during the struggle [with Parks] but he did not know what caused them. We find this sufficient evidence from which the jury could reasonably infer Parks touched Grose in a manner which resulted in bodily injury.”).

2. Double Jeopardy

Article 1, Section 14 of the Indiana Constitution provides, in relevant part, “No person shall be put in jeopardy twice for the same offense.” Our Indiana Supreme Court has held,

Two or more offenses are the ‘same offense’ in violation of Article 1, Section 14 of the Indiana Constitution if, with respect to *either* the statutory elements of the challenged crimes *or* the actual evidence used to convict, the essential elements of one challenged offense also establish the essential elements of another challenged offense.

Richardson v. State, 717 N.E.2d 32, 49 (Ind. 1999) (emphasis in original).

Chandler argues his battery and resisting law enforcement convictions subjected him to double jeopardy based on the “actual evidence” test. Under this test,

the actual evidence presented at trial is examined to determine whether each challenged offense was established by separate and distinct facts. To show that two challenged offenses constitute the “same offense” in a claim of double jeopardy, a defendant must demonstrate a reasonable possibility that the evidentiary facts used by the fact-finder to establish the essential elements of one offense may also have been used to establish the essential elements of a second challenged offense.

Id. at 53. The actual evidence test is satisfied only if the evidence establishing all of the elements of one offense also establishes all of the elements of a second offense. *Spivey v. State*, 761 N.E.2d 831, 833 (Ind. 2002).

Simultaneous convictions of battery and resisting law enforcement do not subject a defendant to double jeopardy if the State alleges and proves acts by the defendant that constitute battery causing injury and different acts by the defendant that constitute resisting law enforcement. *See Haggard v. State*, 810 N.E.2d 751, 758 (Ind. Ct. App. 2004) (convictions of battery and resisting law enforcement did not subject Haggard to double

jeopardy when he bit one officer twice, causing injury; spit in one officer's face; fought the officers' attempts to arrest him; and threw one officer approximately three to four feet); *see also Newman v. State*, 677 N.E.2d 590, 593 (Ind. Ct. App. 1997) (convictions of battery by bodily waste and resisting law enforcement did not subject Newman to double jeopardy because "a separate factual basis for each charge is readily discernable from the record;" Newman swung her head back and forth in an effort to spray officers with her tears, saliva, and nasal secretions, and she also kicked, punched, and swung her arms at officers to avoid being arrested).

Here, the State alleged discrete acts that constituted resisted law enforcement and battery against the officers. The State alleged Chandler resisted law enforcement when he ignored the deputies' orders to stop and, when Deputy Inman grabbed his wrists in an effort to detain him, Chandler jerked away and clenched his fists. As for battery, the State alleged Chandler fought with Deputy Pierce by throwing his elbows and shoving Deputy Pierce as they wrestled, and Deputy Inman testified Chandler twisted his finger in the middle of the scuffle. The Record contains evidence proving those allegations.

Although Chandler's offenses stemmed from the same incident, as Deputies Pierce and Inman attempted to arrest Chandler, independent evidence was alleged and admitted to support each count. Chandler resisted the deputies when he refused to stop and pulled his hands away from the deputy's grasp, and he battered the officers when he wrestled and scuffled with them, causing one deputy to sustain a cut on the arm and the other deputy to sustain a sprained finger. Thus, Chandler was not subjected to double jeopardy. *See*

Newman, 677 N.E.2d at 593 (convictions of battery by bodily waste and resisting law enforcement did not violate double jeopardy because “separate and distinct conduct” supported each count).

CONCLUSION

Evidence was sufficient to convict Chandler of two counts of Class D felony battery because Chandler he shoved and wrestled with one deputy causing a cut on the deputy’s arm, and he twisted another deputy’s finger while engaged in a scuffle with him. Chandler’s convictions of battery and resisting law enforcement did not subject him to double jeopardy because different acts by Chandler were used to prove each crime. The judgment of the trial court is affirmed.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.