



TIBA TEXAS INDEPENDENT BAR ASSOCIATION

Post Office Box 783
Austin, Texas 78767
Tel. 512-354-7823
Fax: 512-532-6282



Web Site: www.texindbar.org

⚖ Vol. 22, No. 35, September 1, 2014

Case Name: [William Bryan Finley III v. The State of Texas](#)

- OFFENSE: Resisting Arrest
- COUNTY: Williamson
- C/A CASE No. 03-13-00015-CR
- DATE OF OPINION: August 28, 2014
- DISPOSITION: Conviction Affirmed OPINION: [Pemberton, J.](#)
- TRIAL COURT: CCL 2; Hon. Timothy Wright
- LAWYERS: [Chris Perri](#) (Defense); [James LaMarca](#) (State)

⚖ **531.02 Sufficiency of the Evidence:** On the morning of March 5, 2011, Officer Ginger Fuller of the Leander Police Department (LPD) arrived at Appellant's residence to arrest his son-in-law, Dennis Boyd, for an outstanding speeding ticket, as part of a periodic "warrant roundup." According to Fuller, Appellant answered the door, told Fuller that Boyd was sleeping, and "refused to let [Fuller] speak to [Boyd] . . . unless [Fuller] would provide him a copy of the warrant." Fuller found Appellant's attitude to be "very uncooperative," and she requested backup. Shortly thereafter, LPD Officer Jarrett Rollins arrived as Fuller's backup and LPD Corporal John Lauden arrived with a copy of the arrest warrant. However, according to Fuller, Appellant still "refused to cooperate." Fuller explained, "He started telling us that our warrant was false and we're serving a false warrant. And then he, again, went back inside." At this point, Fuller believed the situation was escalating because of Appellant's "demeanor" and how he was "not cooperating with us at all." When Appellant went back inside the house, he called 911 and reported that LPD officers "were serving a false warrant." In response to this, the officers on the scene decided to call LPD Officer Scott Connor, the warrant officer who was supervising the roundup. When Connor arrived, Fuller testified, Appellant again "refused to cooperate," and Connor decided to arrest Appellant for hindering the apprehension of Boyd, with the assistance of Rollins. What happened next was controverted at trial. Officers Fuller, Rollins, and Connor all testified that Appellant exerted force in opposition to his arrest, primarily by "pulling away" from Connor and Rollins, while Appellant and other defense witnesses who were at the residence during the arrest testified that Appellant offered no such opposition. On appeal, Appellant asserts that the evidence is insufficient to support his conviction.

Holding: As the State acknowledged both at trial and on appeal, there was no evidence presented that [Appellant] had attempted to hit, kick, punch, or push any of the officers. However, there was evidence presented that [Appellant] had pulled away from the officers, and based on the surrounding circumstances of the arrest as described and demonstrated to the trial court, a rational trier of fact could have reasonably inferred that he had done so in a forceful manner. *** Viewing the above evidence and all reasonable inferences therefrom in the light most favorable

to the finding of guilt, we conclude that the evidence is sufficient to prove that [Appellant] committed the offense of resisting arrest.

Concurring / Dissenting Opinions: [Chief Justice Jones](#) filed a dissenting opinion, arguing that passive non-cooperation does not constitute the degree of “force against [a] peace officer” needed to support a conviction for resisting arrest under Penal Code section 38.03.

Sidebar: ([David A. Schulman](#)) I agree with CJ Jones. If “passive non-cooperation,” as he puts it, constitutes the necessary force, then it is hard to imagine how one could resist arrest without force. That would render the difference between a Class “C” resisting and a Class “A” resisting to be meaningless.