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ATTORNEY FOR APPELLANT:

BARBARA J. SIMMONS
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JANINE STECK HUFFMAN
Deputy Attorney General
Indianapolis, Indiana

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IN THE
COURT OF APPEALS OF INDIANA

SILVESTRE CALDERON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0907-CR-647
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William J. Nelson, Judge
Cause No. 49F07-0904-CM-40901

February 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Silvestre Calderon ("Calderon") appeals from his conviction of resisting law enforcement,[1] a Class A misdemeanor. Calderon presents the following issue for our review: whether the evidence is sufficient to support his conviction of resisting law enforcement.

We affirm.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to the conviction reveal that shortly before noon on April 17, 2009, Lieutenant Matthew Hamner of the Indianapolis Metropolitan Police Department was on patrol in full uniform in his marked police car as a neighborhood resource unit. The windows of Lieutenant Hamner's police car were up and both the radio and air conditioning were operating. While Lieutenant Hamner was driving through a neighborhood, he heard, over the sounds inside his police car, extremely loud music coming from a residence located at 3619 Patton Drive in Marion County. The officer stopped his car, rolled down the car window, and spoke with a neighbor at the corner of Duncan and Patton streets. During that time he observed Calderon, a dog, and a child in the yard in front of the house at 3619 Patton Drive, which was Calderon's residence.

After the neighbor returned to his house, Lieutenant Hamner asked Calderon to come to his police car because he wanted to talk with him about the loud music coming from his house. Calderon made eye contact with Lieutenant Hamner and then turned and walked toward the front door of the house. Lieutenant Hamner exited his police car, yelled for Calderon to stop, and ran toward Calderon who was going into his home. Lieutenant Hamner

[1] *See* Ind. Code § 35-44-3-3(a)(3).

yelled to Calderon that he needed to speak with him because his stereo was too loud. Calderon again looked at the officer and "took off even faster and walked briskly into the house." *Tr*. at 5. While Lieutenant Hamner was at the front door of Calderon's residence, he saw Calderon exit from a door on the right side of the house. Calderon came around the corner shouting "Don't come in here. Get off of my property. You don't have a right to be here." *Id*. at 6. Lieutenant Hamner arrested Calderon for resisting law enforcement.

The State charged Calderon with resisting law enforcement by fleeing, a Class A misdemeanor. After a bench trial, Calderon was found guilty as charged. He was sentenced to 365 days, with 361 days suspended, credit for time served, and 180 days of probation to terminate upon the completion of all terms and payment of all fees. Calderon now appeals.

DISCUSSION AND DECISION

Our standard of review for a challenge to the sufficiency of the evidence is well-settled. When reviewing the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the conviction. *Boyd v. State*, 889 N.E.2d 321, 325 (Ind. Ct. App. 2008). We do not assess witness credibility or reweigh the evidence. *Id*. We consider conflicting evidence most favorably to the trial court's ruling. *Id*. We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id*. It is not necessary that the evidence overcome every reasonable hypothesis of innocence. *Id*. The evidence is sufficient if an inference may reasonably be drawn from it to support the conviction. *Id*.

Calderon claims that there is insufficient evidence to prove beyond a reasonable doubt

that he knowingly and intentionally fled from law enforcement after he was ordered to stop. Calderon acknowledges that the music from his house was extremely loud, but argues that because the music was loud he did not hear Lieutenant Hamner's commands.

Ind. Code §35-44-3-3(a)(3) provides as follows:

> A person who knowingly or intentionally . . . flees from a law enforcement officer after the officer has, by visible or audible means, including operation of the law enforcement officer's siren or emergency lights, identified himself or herself and ordered the person to stop . . . commits resisting law enforcement, a Class A misdemeanor.

The evidence presented to the trial court established that Lieutenant Hamner, who was in full uniform and driving a marked police car, made eye contact with Calderon and asked him to come over to his police car. Instead, Calderon turned and walked toward the front of his house. Lieutenant Hamner exited his car, yelled for Calderon to stop, again made eye contact with Calderon, and ran toward Calderon who was going into his home. Lieutenant Hamner testified that Calderon took off even faster and walked briskly after making eye contact with the officer the second time. Calderon then exited his home from another door and shouted at the officer.

Calderon cites to *Czobakowsky v. State*, 566 N.E.2d 87 (Ind. Ct. App. 1991) to support his position. However, in *Czobakowsky*, the record established that the police officer did not audibly order the defendant to stop, and the officer, in his marked police car, merely approached a group of people gathered in the street, who then fled. There, we found insufficient evidence of a visual order to stop to support the conviction, but noted that the officer's conduct coupled with other circumstances would support a visual order to stop. 566

N.E.2d at 89. In the present case, Lieutenant Hamner, who was in full uniform and in a marked police car, requested that Calderon approach his car and made eye contact with him. When Calderon began walking away, Lieutenant Hamner exited his car, ordered Calderon to stop, and again made eye contact with him, before running after him. Sufficient evidence establishes there was both a visual and audible order to stop in this case.

The remainder of Calderon's argument consists almost entirely of a request for us to reweigh the evidence, a task our standard of review forbids us to do. While Calderon's claim that he did not hear the officer tell him to stop is plausible, it is for the trial court to determine the credibility of the witnesses. There is sufficient evidence to support Calderon's conviction of resisting law enforcement by fleeing.

Affirmed.

DARDEN, J., and MAY, J., concur.