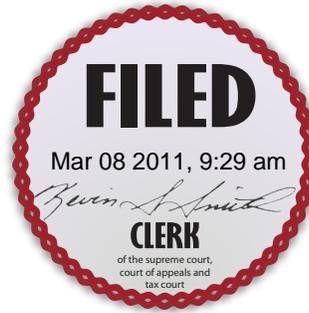


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ANTHONY SCOTT,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 49A02-1007-CR-810

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebekah F. Pierson-Treacy, Judge
The Honorable Shatrese Flowers, Commissioner
Cause No. 49F19-1004-CM-26832

March 8, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Anthony Scott appeals from his conviction of Class A misdemeanor Resisting Law Enforcement.¹ Scott contends that the State failed to produce sufficient evidence to prove that he forcibly resisted law enforcement. We affirm.

FACTS AND PROCEDURAL HISTORY

On March 31, 2010, Indianapolis Metropolitan Police Officers Jeremy Johnson and Ronald Sayles were dispatched to a residence because of a report of a man hitting a child. Both officers were in full uniform and driving marked cars. Upon arrival, Scott's mother Laurie Jackson was outside leaving the residence. Officer Sayles asked Jackson to return and when the trio walked up to the porch, they were met by Scott. When Officer Sayles informed Scott of his presence, Scott reacted in an angry and hostile manner and said that nobody else was in the residence. Officer Sayles indicated that he and Officer Johnson needed to check on the welfare of any children, but Scott slammed the door and locked it.

Officer Johnson went to the side of the residence and heard a male voice from inside say that "I'm going back out there." Tr. p. 13. Scott emerged from the side of the residence, did not respond to Officer Johnson's request to "wait a minute[,]"; walked to the front of the residence, and approached to within one-and-one-half feet of Officer Sayles, who was unaware of his presence until he turned around. Tr. p. 17. Because Scott had approached to a point where he could have potentially had access to Officer Sayles's weapons and had already shown aggression to the officers, Officer Sayles

¹ Ind. Code § 35-44-3-3 (2009).

decided to detain him for officer safety purposes. Officer Sayles attempted to detain Scott, but Scott pulled his arms away several times when Officer Sayles attempted to handcuff him. Scott continued to pull away from Officer Sayles, “was tensing his arms up[,]” and was twisting his upper body from side to side. Tr. p. 43. Eventually Officers Sayles and Johnson managed to handcuff Scott.

On April 1, 2010, the State charged Scott with Class A misdemeanor resisting law enforcement. On July 1, 2010, the trial court found Scott guilty as charged and sentenced him to 365 days of incarceration with 319 days suspended.

DISCUSSION AND DECISION

Whether the State Produced Sufficient Evidence to Sustain Scott’s Conviction

When reviewing the sufficiency of the evidence, we neither weigh the evidence nor resolve questions of credibility. *Jordan v. State*, 656 N.E.2d 816, 817 (Ind. 1995). We look only to the evidence of probative value and the reasonable inferences to be drawn therefrom which support the verdict. *Id.* If from that viewpoint there is evidence of probative value from which a reasonable trier of fact could conclude that the defendant was guilty beyond a reasonable doubt, we will affirm the conviction. *Spangler v. State*, 607 N.E.2d 720, 724 (Ind. 1993).

The offense of resisting law enforcement is governed by Indiana Code section 35-44-3-3, which provides, in relevant part, that “(a) A person who knowingly or intentionally: (1) forcibly resists, obstructs, or interferes with a law enforcement officer ... while the officer is lawfully engaged in the execution of the officer’s duties ... commits resisting law enforcement, a Class A misdemeanor.” The word “forcibly”

modifies ‘resists, obstructs, or interferes’ and that force is an element of the offense.” *Graham v. State*, 903 N.E.2d 963, 965 (Ind. 2009); *see also Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993). Thus, to convict Scott of Class A misdemeanor resisting law enforcement, the State needed to prove that she: (1) knowingly or intentionally; (2) forcibly resisted, obstructed, or interfered with a law enforcement officer; (3) while the officer was lawfully engaged in the execution of his duties. One “forcibly resists,” for purposes of forcibly resisting law enforcement, when one uses “strong, powerful, violent means” to evade a law enforcement official’s rightful exercise of his or her duties. *Graham*, 903 N.E.2d at 965; *Spangler*, 607 N.E.2d at 726.

Scott contends that his resistance did not rise to the level of forcible resistance. While the Indiana Supreme Court has held that “[i]t is error as a matter of law to conclude that ‘forcibly resists’ includes all actions that are not passive[.]” *Spangler v. State*, 607 N.E.2d 720, 724 (Ind. 1993), it has also made it clear that “[t]he force involved need not rise to the level of mayhem.” *Graham v. State*, 903 N.E.2d 963, 965 (Ind. 2009). The Indiana Supreme Court has concluded that “even ‘stiffening’ of one’s arms when an officer grabs hold to position them for cuffing would suffice[.]” *Id.* While the defendant’s conviction for resisting law enforcement was reversed in *Graham*, this case is easily distinguished.

In *Graham*, the record contained no evidence that Graham did anything more than refuse to present his arms for cuffing when asked, *see id.*, but the record here indicates that Scott’s actions went beyond Graham’s passive resistance. When Officer Sayles initially took hold of Scott’s arms, he pulled away. Moreover, Scott continued to pull

away from Officer Sayles, “was tensing his arms up,[,]” and was twisting his upper body from side to side. Tr. p. 43. Pulling away, tensing his arms, and twisting his upper body from side to side constitute more than a mere passive refusal to present one’s arms to be cuffed and support a conclusion that Scott forcibly resisted Officer Sayles. *See, e.g., Johnson v. State*, 833 N.E.2d 516, 518-19 (Ind. Ct. App. 2005) (concluding that defendant forcibly resisted when he turned away and pushed with his shoulders when officers attempted to search him and when he “stiffened up,” forcing officers to exert force to place him in the transport vehicle). We conclude that the State produced sufficient evidence to sustain Scott’s resisting law enforcement conviction.

We affirm the judgment of the trial court.

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