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.

ATTORNEY FOR APPELLANT:

WILLIAM F. THOMS, JR.
Thoms & Thoms
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ANN L. GOODWIN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

KEITH MARTIN-BRANCH,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0810-CR-899
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara A. Collins, Judge
The Honorable Louis F. Rosenberg, Magistrate
Cause No. 49F08-0709-CM-200679

April 9, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Keith Martin-Branch appeals his conviction after a bench trial for class A misdemeanor resisting law enforcement.[1]

We affirm.

ISSUE

Whether there is sufficient evidence to support the conviction.

FACTS

On the night of January 14, 2007, Indianapolis Metropolitan Police Officer Allen Englert "observed a silver [Mitsubishi] traveling westbound in the 5500 block of East 10th going faster than the posted speed limit." (Tr. 10). Using a radar gun, Officer Englert determined that the Mitsubishi was traveling at a rate of sixteen miles per hour over the posted speed limit, prompting him to initiate a traffic stop. He therefore activated his marked vehicle's emergency lights and siren in an effort to pull over the Mitsubishi. At one point, the driver of the Mitsubishi "pulled over to the right side of the curb" but then "continued east bound a little bit longer," making a right-hand turn on to Irvington Avenue. *Id.* at 11.

Officer Englert remained behind the Mitsubishi for approximately fifteen seconds more until the driver stopped. Officer Englert, who was in full uniform, exited his vehicle and approached the Mitsubishi. He observed and made eye contact with both the driver and the front-seat passenger, later identified as Martin-Branch. As he started to tell

[1] Ind. Code § 35-44-3-3.

"the driver to turn the ignition off and put the window down," the driver "fled off in the car with his passenger." *Id.* at 16.

Officer Englert returned to his vehicle and chased the Mitsubishi until it turned east on 13th Street. After turning, "the car pulled up into the front yard and both the driver and the passenger ran from the vehicle southbound." *Id.* at 16. Officer Englert radioed for assistance and set up a perimeter around the area. After Martin-Branch's apprehension by a canine officer, Officer Englert identified him as the passenger in the Mitsubishi. A check of the Mitsubishi's license plate number revealed that it had been reported stolen on January 11, 2007.

On September 27, 2007, the State charged Martin-Branch with Count 1, class A misdemeanor resisting law enforcement; and Count 2, class B misdemeanor unauthorized entry of a motor vehicle. The State moved to dismiss Count 2, which the trial court granted. Following a bench trial on July 29, 2008, the trial court found Martin-Branch guilty of resisting law enforcement and sentenced him to 180 days with 176 days suspended to probation.

DECISION

Martin-Branch asserts that the evidence was insufficient to sustain his conviction for resisting law enforcement.

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate

> courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

Pursuant to Indiana Code section 35-44-3-3(a)(3), 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 . . . and ordered the person to stop" commits resisting law enforcement as a class A misdemeanor. "It is well settled that '[i]n Indiana, an individual may not flee from a police officer who has ordered the person to stop, regardless of the apparent or ultimate lawfulness of the officer's order.'" *Cole v. State*, 878 N.E.2d 882, 886 (Ind. Ct. App. 2007) (quoting *Dandridge v. State*, 810 N.E.2d 746, 749 (Ind. Ct. App. 2004), *trans. denied*).

Martin-Branch argues that "while the driver of the vehicle was under a duty to stop, [he], as a passenger, was under no such duty because the stop was for speeding." Martin-Branch's Br. at 3. He further asserts that "[t]he evidence does not show that [he] was ever ordered to stop" by Officer Englert. Martin-Branch's Br. at 3. We disagree.

Here, Officer Englert conducted a traffic stop, the propriety of which Martin-Branch does not dispute. Once he did so, he also stopped Martin-Branch. *See Tawdul v. State*, 720 N.E.2d 1211, 1217 (Ind. Ct. App. 1999) ("Once an officer effects a lawful traffic stop, the passenger of that vehicle is also validly stopped."), *trans. denied*.

As Officer Englert exited his vehicle, his emergency lights remained activated. He approached the Mitsubishi, making eye contact with Martin-Branch. Thus, Officer Englert clearly had ordered Martin-Branch to stop. *See* I.C. § 35-44-3-3(a)(3); *Spears v. State*, 412 N.E.2d 81, 83 (Ind. Ct. App. 1980) (finding the evidence sufficient to support a conclusion that an officer had visually ordered Spears to stop by approaching Spears' vehicle with his police badge and radio in hand and gun in sight even though the officer was wearing civilian clothing and driving a personal vehicle). Once Officer Englert ordered him to stop, Martin-Branch had no right to flee. *See Cole*, 878 N.E.2d at 886.

After the initial stop, when Officer Englert exited his vehicle and approached the Mitsubishi, the driver of the Mitsubishi sped away, with Martin-Branch in the vehicle. Officer Englert gave chase, with both his emergency lights and siren activated. The driver of the Mitsubishi eventually came to a second stop, whereupon both he and Martin-Branch fled on foot. Given that Martin-Branch fled on foot after being ordered to stop both by visible—namely, eye contact with a uniformed police officer and emergency lights—and audible—namely, the siren—means, we find the evidence is sufficient to sustain his conviction for resisting law enforcement.

Affirmed.

BAILEY, J., and ROBB, J., concur.