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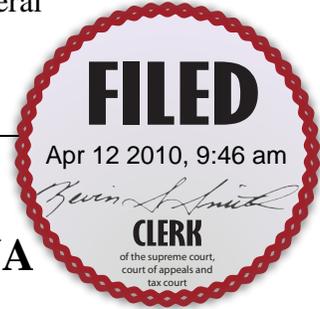
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**IN THE
COURT OF APPEALS OF INDIANA**

RAMIRO BAUTISTA,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A04-0909-CR-495

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kimberly Brown, Judge
Cause No. 49G16-0904-FD-038091

April 12, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Ramiro Bautista (“Bautista”) was convicted in Marion Superior Court of Class A misdemeanor resisting law enforcement. The trial court sentenced him to a term of one year with all but sixteen days suspended. Bautista appeals and argues that the evidence was insufficient to support his conviction for Class A misdemeanor resisting law enforcement.

We affirm.

Facts and Procedural History

On April 7, 2009, police were called to the residence of Bautista and his wife on a report of a domestic disturbance. Two officers arrived and determined that a physical altercation had occurred between Bautista and his wife. They separated the pair, and Bautista went to a neighbor’s house. After interviewing Bautista’s wife, the officers determined that there was probable cause to arrest Bautista for domestic battery.

The two officers went to the neighbor’s house to arrest Bautista. After being told that he was to be arrested, Bautista refused to give officers his hands, pulled back, and jerked away when the officers attempted to place handcuffs on his wrists. As the officers continued their attempt to handcuff Bautista, he stiffened his arms and pulled away. Bautista “tussled” with officers as they moved from the living room to the kitchen where the men slammed into the refrigerator. Bautista went to the ground where he was finally handcuffed.

On April 7, 2009, the State charged Bautista with Class A misdemeanor resisting law enforcement and Class B misdemeanor battery, which was elevated to a Class D felony because of a prior battery conviction on the same person. On August 3, 2009, a

bench trial began. The State dismissed the battery charged. The trial court found Bautista guilty of Class A misdemeanor resisting law enforcement. On August 10, 2009, the trial court sentenced Bautista to one year, with all but sixteen days suspended to probation. Bautista now appeals.

Discussion and Decision

Bautista argues that the evidence was insufficient to support his conviction for Class A misdemeanor resisting law enforcement, specifically, that the State failed to prove that Bautista forcibly resisted the two police officers. When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id. If inferences may be reasonably drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt, then circumstantial evidence will be sufficient. Id.

Under Indiana Code section 35-44-3-3 (a) (2004), “[a] person who knowingly or intentionally . . . forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of the officer’s duties . . . commits resisting law enforcement, a Class A misdemeanor[.]”

Our supreme court’s opinion in Spangler v. State, 607 N.E.2d 720 (Ind. 1993), examined the elements of the crime of resisting. Justice DeBruler noted that the word

“forcibly” modifies “resists, obstructs, or interferes” and that force is an element of the offense. He explained that one “forcibly resists” when “strong, powerful, violent means are used to evade a law enforcement official’s rightful exercise of his or her duties.” Id. at 723. Spangler had refused to accept service of process from an officer, walking away from the officer in the face of demands that he accept a protective order. Our supreme court held that such action was resistance to authority but not “forcible” resistance. Id. “It is error as a matter of law to conclude,” our supreme court said, “that ‘forcibly resists’ includes all actions that are not passive.” Id. at 724. Spangler’s conviction was reversed. Id.

The force involved need not rise to the level of mayhem. In Johnson v. State, 833 N.E.2d 516, 517 (Ind. Ct. App. 2005), a defendant in custody “pushed away with his shoulders while cursing and yelling” when the officer attempted to search him. As officers attempted to put him into a police vehicle, Johnson “stiffened up” and the police had to get physical in order to put him inside. Id. We held that Johnson’s actions constituted forcible resistance. Id.

We conclude that Bautista’s actions while being arrested by the officers is sufficient to support his conviction for Class A misdemeanor resisting law enforcement. As our supreme court noted in Graham v. State, 903 N.E.2d 963, 966, “even ‘stiffening’ of the arms when an officer grabs hold to position them for cuffing would suffice[.]” In this case, Bautista pulled away from and “tussled” with the officers. During the arrest and handcuffing process, Bautista actions caused the two officers involved to move from

the living room to the kitchen where all three slammed into the refrigerator before Bautista was handcuffed.

The evidence is sufficient to support Bautista's conviction for Class A misdemeanor resisting law enforcement.

Affirmed.

RILEY, J., and BRADFORD, J., concur.