

Michael J. Orr appeals his conviction after a bench trial of Resisting Law Enforcement¹ as a class A misdemeanor. Orr presents the following issue for review: Was there sufficient evidence of an order to stop to support Orr's conviction of resisting law enforcement?

We affirm.

On August 24, 2008, Orr was the front-seat passenger of a black Honda car stopped by Lawrence Police Department Officer Brian Sharp. Officer Sharp asked Orr and the driver for their names and arrest histories and asked Orr about his tattoos. After speaking with the two, Officer Sharp allowed them to go. Earlier that evening police officers had broken up a party about two or three blocks away from the current stop where juveniles had been drinking. Orr knew of the party but did not attend.

About twenty minutes later, at approximately 1:45 a.m., Officer Sharp, who was patrolling the area in a fully marked police car and was wearing a police uniform, again observed Orr and the black Honda. On this occasion, Orr was standing with another individual next to the black Honda at a well-lit Indianapolis intersection approximately twenty to thirty yards away from the officer. Officer Sharp approached them in his patrol car because the friend looked like a juvenile and it was past curfew. Orr and the other person looked directly at Officer Sharp before running south while the black Honda sped east. Officer Sharp shined his spotlight on Orr and his friend after they started running. The friend stopped but Orr continued running through yards and between houses.

¹ See Ind. Code Ann. § 35-44-3-3(West, PREMISE through Public Laws approved and effective through

Orr testified at his bench trial that he was not present at the intersection and was not the individual who ran from Officer Sharp. Orr claimed that he went to the park to retrieve his bike after the first incident with Officer Sharp. Orr also testified that he believed the police were “out hot” that night. *Transcript* at 15. The trial court found Officer Sharp’s identification of Orr and his testimony to be more credible and found Orr guilty of resisting law enforcement as a class A misdemeanor.

Orr filed a motion for appointment of pauper appellate counsel on November 3, 2008. The trial court entered an order appointing a public defender to represent Orr on December 15, 2008. Orr filed a motion for belated notice of appeal on December 18, 2008, which the trial court granted on December 22, 2008.² Orr now appeals.

When considering a challenge to the sufficiency of evidence supporting a conviction, we neither reweigh the evidence nor reassess witness credibility. *Alkhalidi v. State*, 753 N.E.2d 625 (Ind. 2001). We only consider the evidence most favorable to the judgment and the reasonable inferences that can be drawn therefrom. *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). Moreover, we will affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Alkhalidi v. State*, 753 N.E.2d 625.

In order to convict Orr of resisting law enforcement as a class A misdemeanor, the

4/20/09).

² In his statement of the issues Orr argues that his belated appeal should not be dismissed because he was diligent in seeking his appeal. Since the State does not raise that issue on cross-appeal and concedes that Orr acted in a timely manner in pursuing his appeal, we do not address that issue here.

State was required to establish beyond a reasonable doubt that Orr knowingly or intentionally fled from Officer Sharp after Officer Sharp had by visible or audible means identified himself and ordered Orr to stop. *See* I. C. § 35-44-3-3(a)(3). At issue here is the order to stop. Orr contends that the evidence is insufficient to establish that he was ordered to stop when Officer Sharp utilized his spotlight on Orr and his friend after they ran from him as he approached them at the intersection.

“A police officer’s order to stop need not be limited to an audible order to stop.” *Fowler v. State*, 878 N.E.2d 889, 894 (Ind. Ct. App. 2008) (citing *Spears v. State*, 412 N.E.2d 81, 83 (Ind. Ct. App. 1980)). In *Spears* we held that the phrase “by visible or audible means” was intended to modify both words “identified” and “ordered.” 412 N.E.2d at 83. Consequently, it is not necessary for an officer to audibly order a person to stop if the circumstances surrounding the incident are sufficient to show that a visible order to stop had been given. *Id.* We have held that the mere approach of a uniformed officer is not sufficient to create a reasonable perception that a visible order to stop had been given. *See Czobakowsky v. State*, 566 N.E.2d 87 (Ind. Ct. App. 1991). The trier of fact can infer that a defendant knew he was being ordered to stop where other individuals with him recognized the order to stop. *Roberts v. State*, 799 N.E.2d 549 (Ind. Ct. App. 2003).

Here, Officer Sharp was in a fully marked police car and was wearing a police uniform at approximately 1:45 a.m. Orr and his friend made eye contact with Officer Sharp in a well-lit intersection and began running when Officer Sharp approached them in his police car. Officer Sharp followed Orr and his friend in his car and utilized his spotlight on

them. The friend stopped while Orr continued running through yards and between houses. A reasonable person would have recognized from the totality of the circumstances that Officer Sharp had visibly ordered Orr and his friend to stop, and Orr's continued flight from Officer Sharp was in defiance of that order.

Judgment affirmed.

BAKER, C.J., and RILEY, J., concur.