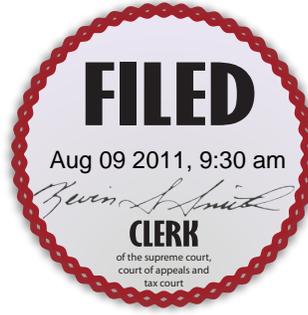


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

RONALD MILLER,)
)
 Appellant-Defendant,)
)
 vs.) No. 49A02-1101-CR-3
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Barbara Cook Crawford, Judge
Cause No. 49G21-1011-CM-86267

August 9, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Ronald Miller appeals his convictions for Class A misdemeanor Invasion of Privacy¹ and Class A misdemeanor Resisting Law Enforcement.² Specifically, Miller contends that the evidence presented at trial was insufficient to sustain his convictions. We affirm.

FACTS AND PROCEDURAL HISTORY

At approximately 4:00 a.m. on November 14, 2010, Indianapolis Metropolitan Police Officers James McGunegill and Bryan Fitzgerald were dispatched to a domestic disturbance call from Chelsi Bluitt's mother's home in Indianapolis. Upon arriving at the home, Officers McGunegill and Fitzgerald encountered Bluitt, Miller (who is Bluitt's husband), and Bluitt's mother having a "heated argument" on the front porch. Tr. pp. 34, 52. After separating the individuals, Officers McGunegill and Fitzgerald discovered that Bluitt had filed a protective order against Miller, but that Miller had not yet been informed of or served with the protective order.

Officer McGunegill proceeded to inform Miller of the protective order and twice explained that the protective order prohibited him from having any direct or indirect contact with Bluitt. Both times, Miller replied, "I understand." Tr. p. 36. In addition, Officer Fitzpatrick told Miller that the protective order prohibited him from having direct or indirect contact with Bluitt. Officer Fitzpatrick explained that indirect contact included asking a third

¹ Ind. Code § 35-46-1-15.1 (2010).

² Ind. Code § 35-44-3-3 (2010).

party, such as Bluitt's mother, to speak to Bluitt on his behalf. Miller again indicated that he understood.

Miller began to leave after being informed of the protective order, but after walking about ten or fifteen feet, began yelling and cursing at Bluitt. Officer McGunegill warned Miller that this contact violated the protective order and told Miller to leave Bluitt's mother's property. Eventually, Miller walked away. After Miller left, Officers McGunegill and Fitzpatrick considered the incident to be over. A few minutes later, before either officer had left Bluitt's mother's property, Miller returned and again began yelling and cursing at Bluitt. Miller approached Officer Fitzpatrick, who was sitting in his patrol vehicle, tapped on the window of Officer Fitzpatrick's vehicle, and asked Officer Fitzpatrick to speak to Bluitt on his behalf. Officer Fitzpatrick explained that he could not do so because it would violate the protective order and warned Miller that any continued attempt to speak to Bluitt could result in his arrest. Miller disregarded Officer Fitzpatrick's warning and continued to yell at Bluitt.

At that point, Officer McGunegill approached and placed Miller under arrest for violating the protective order. Officer McGunegill attempted to handcuff Miller, but Miller jerked his arm away when Officer McGunegill reached for his wrist. Officer Fitzpatrick, who was still sitting in his police cruiser just behind Miller, attempted to exit his vehicle but was blocked from doing so by Miller and Officer McGunegill. Eventually, Officer Fitzpatrick was able to exit his vehicle at which time Miller was "flailing his arms," "turning around, or trying to turn around," and continuing to "struggle with" Officer McGunegill. Tr. p. 58. Officer McGunegill required Officer Fitzpatrick's assistance to place Miller in

handcuffs. Even after being placed in handcuffs, Miller continued to struggle with Officer McGunnegill by trying to “spin away from” Officer McGunnegill as he tried to conduct a search of Miller’s person. Tr. p. 43.

On November 14, 2010, the State charged Miller with Class A misdemeanor invasion of property, Class A misdemeanor resisting law enforcement, and Class B misdemeanor public intoxication. Following a bench trial which was conducted on December 8, 2010, the trial court found Miller guilty of Class A misdemeanor invasion of privacy and Class A misdemeanor resisting law enforcement and not guilty of Class B misdemeanor public intoxication. Sentencing was held immediately after the conclusion of the bench trial, and the trial court sentenced Miller to an aggregate term of 365 days. This appeal follows.

DISCUSSION AND DECISION

Miller contends that neither his invasion of privacy nor his resisting law enforcement conviction was supported by sufficient evidence.

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.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (citations, emphasis, and quotations omitted). Thus, upon review, appellate courts do not reweigh the evidence or assess the credibility of the witnesses. *Stewart v. State*, 768 N.E.2d 433, 435 (Ind. 2002).

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, 867 N.E.2d at 146-47 (citations, emphasis, and quotations omitted). “[I]t is for the trier of fact to reject a defendant’s version of what happened, to determine all inferences arising from the evidence, and to decide which witnesses to believe.” *Holeton v. State*, 853 N.E.2d 539, 541 (Ind. Ct. App. 2006).

A. Invasion of Privacy

A person who knowingly or intentionally violates a protective order commits invasion of privacy as a Class A misdemeanor. Ind. Code § 35-46-1-15.1. Therefore, in order to convict Miller of Class A misdemeanor invasion of privacy, the State was required to prove that Miller: (1) knowingly or intentionally (2) violated a protective order. Ind. Code § 35-46-1-15.1. “A person engages in conduct ‘intentionally’ if, when he engages in the conduct, it is his conscious objective to do so.” Ind. Code § 35-41-2-2(a) (2010). “A person engages in conduct ‘knowingly’ if, when he engages in the conduct, he is aware of a high probability that he is doing so.” Ind. Code § 35-41-2-2(b).

Here, the record indicates that Bluitt obtained a protective order against Miller at some point before November 14, 2010. Upon arriving at Bluitt’s mother’s home, Officers McGunegill and Fitzpatrick discovered that Bluitt had received the protective order against Miller, but that Miller had not been told about or served with the protective order. Officer McGunegill informed Miller about the protective order and twice explained that the protective order prohibited Miller from having direct or indirect contact with Bluitt. Miller

indicated both times that he understood. Officer Fitzpatrick also told Miller that he was prohibited from having direct or indirect contact with Bluitt because of the protective order. Officer Fitzpatrick explained that indirect contact included asking a third party to speak to Bluitt on his behalf. Miller indicated that he understood.

Miller argues, however, that the evidence is insufficient to support his conviction for invasion of privacy because there was no separation in time from his being informed of the protective order and his violation of it, and that the entire episode represents one “continuous situation.” Appellant’s Br. p. 6. Miller, however, does not present any authority in support of this position. To the contrary, the evidence most favorable to the judgment of the trial court demonstrates that Miller left his mother-in-law’s property after being informed of the protective order. Officers McGunegill and Fitzpatrick testified that they considered the initial episode to be over after Miller left. A few minutes later, however, Miller returned, yelled at Bluitt, and asked Officer Fitzpatrick to contact Bluitt on his behalf. Miller continued to yell at Bluitt even after being warned by Officer Fitzpatrick that he was violating the protective order by doing so. The evidence was sufficient to sustain Miller’s conviction for Class A misdemeanor invasion of privacy. *See Dixon v. State*, 869 N.E.2d 516, 519-20 (Ind. Ct. App. 2007) (concluding that the evidence was sufficient to prove that defendant knowingly violated the protective order by returning to the victim’s home and re-approaching the victim mere hours after having been verbally informed of the protective order by the arresting officer). Miller’s argument effectively on appeal amounts to an invitation for this court to reweigh the evidence, which we will not do. *See Stewart*, 768

N.E.2d at 435.

B. Resisting Law Enforcement

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. *See Graham v. State*, 903 N.E.2d 963, 965 (Ind. 2009); *Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993). Thus, to convict Miller of Class A misdemeanor resisting law enforcement, the State needed to prove that Miller: (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.

In *Graham*, the Indiana Supreme Court held that in determining that an individual forcibly resisted, the force involved need not rise to the level of mayhem, and discussed with approval this court’s determination in *Johnson v. State*, 833 N.E.2d 516 (Ind. Ct. App. 2005), that a defendant had forcibly resisted law enforcement officers by “push[ing] away with his shoulders while cursing and yelling” as the officer attempted to search him and by “stiffen[ing] up” as officers attempted to put him into a police vehicle, requiring the officers

to “get physical in order to put him inside.” *Graham*, 903 N.E.2d at 965-66. In *Lopez v. State*, 926 N.E.2d 1090, 1094 (Ind. Ct. App. 2010), *trans. denied*, this court affirmed the defendant’s conviction for resisting law enforcement by refusing to stand or uncross his arms upon being ordered to do so by the arresting officer and by attempting to pull away from the arresting officer, requiring the officer to use physical force to arrest him. Likewise, in *J.S. v. State*, 843 N.E.2d 1013, 1017 (Ind. Ct. App. 2006), *trans. denied*, this court concluded that the evidence was sufficient to support the juvenile’s adjudication for what would be resisting law enforcement if committed by an adult when the evidence demonstrated that the juvenile “pulled,” “yanked,” and “jerked” away from the officer, and was “flailing her arms,” “squirring her body,” and “making it impossible for [the officer] to hold her hands.”

Similarly, the evidence here demonstrates that Miller forcibly resisted as Officer McGunegill placed him under arrest after he re-approached Bluitt’s mother’s property and knowingly violated the protective order. Miller struggled with Officer McGunegill to the point that Officer McGunegill had to get physical with Miller in order to place Miller under arrest. As Officer McGunegill attempted to handcuff Miller, he “pulled away” from Officer McGunegill in such a manner that he would have elbowed Officer Fitzpatrick in the face if he were standing, rather than sitting, behind Miller. Officer Fitzpatrick testified that as he approached to assist Officer McGunegill, Miller was “flailing his arms,” “turning around or trying to turn around,” and continuing to “struggle with” Officer McGunegill so much so that Officer McGunegill needed Officer Fitzpatrick’s assistance to place Miller in handcuffs. Tr. p. 58. Moreover, even after being placed in handcuffs, Miller continued to struggle with

Officer McGunnegill by trying to “spin away from” Officer McGunnegill as he tried to conduct a search of Miller’s person. Tr. p. 43. Based on these facts and in light of the Indiana Supreme Court’s approval of *Johnson* and this court’s conclusions in *Lopez* and *J.S.*, we conclude that the evidence most favorable to the judgment of the trial court demonstrates that Miller forcibly resisted Officer McGunnegill while he was lawfully engaged in the execution of his law enforcement duties. Thus, we conclude that the record contained sufficient evidence to sustain Miller’s resisting law enforcement conviction. Again, Miller’s argument on appeal effectively amounts to an invitation for this court to reweigh the evidence, which we will not do. *See Stewart*, 768 N.E.2d at 435.

The judgment of the trial court is affirmed.

ROBB, C.J., and BARNES, J., concur.