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IN THE
COURT OF APPEALS OF INDIANA

RAYMOND C. SILLER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 10A01-0903-CR-134
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CLARK SUPERIOR COURT
The Honorable Vicki L. Carmichael, Judge
Cause No. 10D01-0708-FC-100

September 21, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Raymond C. Siller appeals his conviction of Resisting Law Enforcement,[1] a class A misdemeanor, challenging the sufficiency of the evidence as the sole issue on appeal.

We affirm.

The facts favorable to the conviction are that on July 30, 2007, Officer Steve Cooper of the Jeffersonville Police Department was dispatched to initiate a stop of a white male driving a maroon-colored vehicle, after two female juveniles called to report that the driver had made inappropriate sexual comments to them and propositioned them as they walked along a public street. After Officer Cooper executed the stop of the subject vehicle, he approached the car and ordered the driver – Siller – to place his hands on the steering wheel. Siller refused to comply. Officer Cooper repeated the command and Siller again refused to comply. The officer noticed that Siller was "fidgeting" inside the vehicle and appeared to be reaching for something. *Transcript* at 44. Officer Cooper asked twice whether there were any weapons in the car and then ordered Siller to exit the vehicle. Siller complied and Officer Cooper directed Siller to place his hands on the rear of his car. As the officer began to pat down Siller, Siller began to turn around. Officer Cooper told Siller to keep his hands on the car and started to pat down Siller a second time. Siller again began to turn around and face the officer, at which point Officer Cooper decided to handcuff him. After Officer Cooper placed the first hand in the handcuffs and attempted to move it behind Siller's back to complete the procedure, Siller resisted by stiffening his arm and tried to pull his arm away from the officer. Officer Cooper twice warned Siller that he must cooperate and eventually

[1] Ind. Code Ann. § 35-44-3-3 (West, PREMISE through 2009 Public Laws approved and effective through

managed to secure Siller in the handcuffs.

Among other things, Siller was charged with resisting law enforcement as a class A misdemeanor in connection with the incident. He was convicted of that offense following a bench trial.

Siller contends the evidence was insufficient to support the conviction. Our standard of review for challenges to the sufficiency of evidence is well settled.

> When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder's exclusive province to weigh conflicting evidence and therefore neither reweigh the evidence nor judge witness credibility. *McHenry v. State*, 820 N.E.2d 124 (Ind. 2005). We consider only the probative evidence and reasonable inferences supporting the verdict, and "must 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.'" *Id*. at 126 (quoting *Tobar v. State*, 740 N.E.2d 109, 111-12 (Ind. 2000)).

Gleaves v. State, 859 N.E.2d 766, 769 (Ind. Ct. App. 2007).

Siller contends that the evidence was not sufficient to prove the "forcibly" element set out in I.C. § 35-44-3-3(a)(1), which provides, "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[.]" According to Siller, our Supreme Court in *Spangler v. State*, 607 N.E.2d 720 (Ind. 1993), determined that "forcibly" in this context implies that "strong, powerful, violent means are used to evade a law enforcement official's rightful exercises of his or her duties." *Appellant's Brief* at 8. Siller

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4/20/2009).

acknowledges stiffening his arm when Officer Cooper attempted to handcuff him, but claims such does not rise to the level of "forcible" resistance as set out in *Spangler*.

In arguing this point, Siller attempts to distinguish a much more recent case, i.e., *Graham v. State,* 903 N.E.2d 963 (Ind. 2009). In *Graham*, the Supreme Court discussed the "forcibly" element of I.C. § 35-44-3-3. Contrary to Siller's assertion, *Graham* discussed precisely the situation that confronts us here and clarified that the actions attributed to Siller in this case satisfy the "forcibly" element of resisting arrest, *viz.*, "[t]he weight of the debate on appeal has been whether refusing to present one's arms for cuffing constitutes use of force. *While even "stiffening" of one's arms when an officer grabs hold to position them for cuffing would suffice*, there is no fair inference here that such occurred." *Id*. at 966 (emphasis supplied). Officer Cooper testified that Siller resisted the officer's efforts to handcuff him as follows:

> Q. So are you staying [sic] that he forcibly resisted you?
>
> A. Yes.
>
> Q. He would not allow you to put … he would not allow you to handcuff him?
>
> A. He would lock his arm up, and I warned him several times.
>
> Q. So you just showed me, locking his arm up. So you are showing that he is just …
>
> A. He has his arms [sic] in the handcuff and as I am bring [sic] around, he just stiffened it up.

Transcript at 47. The foregoing reflects that there was evidence that Siller stiffened his arms in order to resist Officer Cooper's efforts to handcuff him. As explicitly explained in

Graham, this was sufficient to prove the "forcibly" element of resisting law enforcement under I.C. § 35-44-3-3.

Judgment affirmed.

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