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IN THE
COURT OF APPEALS OF INDIANA

MOUSSA OUSMANE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0905-CR-199
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable David C. Bonfiglio, Judge
Cause No. 20D06-0803-FD-76

OCTOBER 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

Moussa Ousmane appeals his conviction by jury of resisting law enforcement as a class D felony. We reverse.

The sole issue for our review is whether there is sufficient evidence to support Ousmane's conviction.

The State charged Ousmane with class D felony battery and class D felony resisting law enforcement following Ousmane's altercation with Officers Isaiah Boyer and Kevin Rulli who were passing out laundry at the Elkhart County Jail where Ousmane was incarcerated. A jury convicted Ousmane of causing physical pain to Officer Boyer while resisting him. Ousmane appeals.

Ousmane argues that there is insufficient evidence to support his conviction. Our standard of review for sufficiency of the evidence is well settled. We neither reweigh the evidence nor assess the credibility of witnesses. *Sallee v. State*, 777 N.E.2d 1204, 1208 (Ind. Ct. App. 2002), *trans. denied*. Rather, we look to the evidence and reasonable inferences to be drawn therefrom. *Id.* If there is probative evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt, we will affirm the conviction. *Id.*

Indiana Code Section 35-44-3-3 provides in pertinent part that a person who knowingly or intentionally forcibly resists a law enforcement officer or a person assisting while the officer is lawfully engaged in the execution of his duties as an officer commits Class A misdemeanor resisting law enforcement. The offense is a class D felony if the forcible resistance causes bodily injury. Indiana Code Section 35-41-1-17 defines a law

enforcement officer as 1) a police officer, sheriff, constable, marshal, prosecuting attorney, special prosecuting attorney, special deputy prosecuting attorney, the securities commissioner, or the inspector general; 2) a deputy of any of those persons; 3) an investigator for a prosecuting attorney or the inspector general; 4) a conservation officer; 5) an enforcement officer of the alcohol and tobacco commission; or 6) an enforcement officer of the securities division of the office of the secretary of state.

Here, Ousmane argues that there is insufficient evidence that Officer Boyer is a law enforcement officer as set forth in the statute. The State agrees that although Officer Boyer was employed by the Sheriff's Department as a "Corrections Officer 2," there is no evidence in the record that the officer was in fact a deputy or special deputy and thus a law enforcement officer as defined by the statute. Both parties are correct. There is insufficient evidence to support Ousmane's conviction of class D felony resisting law enforcement.

Reversed.

KIRSCH, J., and BRADFORD, J., concur.