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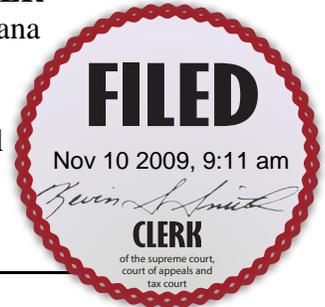
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**IN THE
COURT OF APPEALS OF INDIANA**

DAVID A. HOUSE,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A02-0905-CR-404

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 16
The Honorable Kimberly J. Brown, Judge
Cause No. 49G16-0812-FD-295792

November 10, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, David A. House (House), appeals his conviction for resisting law enforcement, as a Class A misdemeanor, Ind. Code § 35-44-3-3.

We affirm.

ISSUE

House raises one issue, which we restate as: Whether the State presented sufficient evidence to prove beyond a reasonable doubt that he forcibly resisted law enforcement.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to the conviction are that on December 31, 2008, Indianapolis Metropolitan Police Officers Marlin Douglas (Officer Douglas) and Michael Martin (Officer Martin) arrived at House's residence in response to a domestic disturbance call. Officer Douglas spoke to House's girlfriend, Margaret Boykins (Boykins), and while he was speaking to Boykins, House "became aggressive, combative, towards [him] and the other officer." (Transcript p. 8).¹ Specifically, House started walking towards Officer Douglas yelling "that's not what happened, I didn't hit her" and "this is my house, I didn't call you here, you don't need to be here." (Tr. p. 9).

Meanwhile, Officer Martin took Boykins upstairs to interview her while Officer Douglas stayed with House downstairs. House "continued to be aggressive and combative[.]" so Officer Douglas decided to place House in handcuffs for his safety. (Tr. p.

¹ There are two sets of page numbers in the Transcript. The citations in this decision refer to the handwritten page numbers.

9). While Officer Douglas was attempting to handcuff House, he told House to sit down in a nearby chair. House refused to sit down, so Officer Douglas forcibly sat him down. House began to fall over the chair, and Officer Douglas “wrestl[ed]” with House to try to handcuff him. (Tr. p. 10).

While Officer Martin was upstairs, he heard “what sounded like wrestling or falling” so he came down to assist Officer Douglas. (Tr. p. 18). Officer Douglas continued his attempts at cuffing House, but House was holding one arm back and had his other arm under his body. Furthermore, Officer Martin testified that during the cuffing, House was “pulling his arm forward, curling it in.” (Tr. p. 18). Officer Douglas eventually handcuffed House’s arms behind his back.

After House was handcuffed, he started walking towards Officer Douglas. Officer Douglas grabbed House’s arm and House “shoved” away from him. (Tr. p. 12). Also, House refused to sit down and do what the officers asked of him while he was waiting on the police transport vehicle to arrive.

On December 31, 2008, the State filed an Information charging House with Count I, domestic battery, a Class D felony, I.C. § 35-44-3-3; Count II, domestic battery, a Class A misdemeanor, I.C. § 35-42-2-1.3; Count III, battery, a Class A misdemeanor, I.C. §35-42-2-1; and Count IV, resisting law enforcement, a Class A misdemeanor, I.C. § 35-44-3-3. On March 2, 2009, the trial court granted the State’s motion to dismiss Counts I, II, and III due to the unavailability of the complaining witness. Also, on March 2, 2009, the trial court conducted a bench trial and found House guilty of resisting law enforcement. On March 30,

2009, the trial court sentenced House to one year incarceration, with 335 days suspended and thirty days executed with a credit for seven days served for a total of eight days to be served in the Indiana Department of Correction.

House now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

House argues that the State presented insufficient evidence to convict him of resisting law enforcement. Our standard of review for a sufficiency of the evidence claim is well settled. In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. *Perez v. State*, 872 N.E.2d 208, 212-13 (Ind. Ct. App. 2007), *trans. denied*. We will consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id.* Reversal is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense. *Id.*

House specifically claims the State failed to prove beyond a reasonable doubt the forceful resistance element of I.C. § 35-44-3-3. Under Indiana Code section 35-44-3-3(a)(1), “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[.]” Thus, to convict House of resisting law enforcement as a Class A misdemeanor, the State needed to prove beyond a reasonable doubt that House knowingly or

intentionally acted forcibly to resist, obstruct, or interfere with Officer Douglas while he was lawfully engaged in his official duties as a police officer.

Our supreme court has explained that one forcibly resists when “strong, powerful, violent means are used to evade a law enforcement official’s right to exercise his or her duties.” *Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993). Yet, the force used by a defendant does not have to rise to the level of mayhem. *Graham v. State*, 903 N.E.2d 963, 965 (Ind. 2009).

As such, we have held that a defendant’s action of stiffening his body constituted forcible resistance of a law enforcement officer. *Johnson v. State*, 833 N.E.2d 516, 519 (Ind. Ct. App. 2005). In *Johnson*, the police attempted to put the defendant in their vehicle, but the defendant “stiffened up” which required the officers to use physical force to get him inside the vehicle. *Id.* at 517.

Recently, our supreme court distinguished *Johnson*, holding that refusing to present one’s arms for cuffing, without more resistance, does not constitute the use of force. *Graham v. State*, 903 N.E.2d 963, 965 (Ind. 2009). The court reasoned that refusing to present one’s hands for cuffing was not even a modest level of resistance, yet “stiffening of one’s arms when an officer grabs hold to position them for cuffing” would still be sufficient evidence of forcible resistance of a law enforcement officer. *Id.* at 966.

Officers Douglas testified that while he was attempting to handcuff House, he “had one arm back and the other arm he had under his body.” (Tr. p. 11). Furthermore, Officer Martin testified that he saw House “pulling his arm forward, curling it in, keeping [Officer

Douglas] from putting the other handcuff on.” (Tr. p. 18). Unlike the defendant in *Graham*, House did more than simply resist presenting his hands for cuffing. House’s actions of curling and hiding his arms during cuffing presents the same amount of resistance to a law enforcement officer as stiffening one’s body, as the defendant did in *Johnson*. Similarly, we have held that pulling, jerking, or yanking one’s arms away from a law enforcement officer constitutes forcible resistance. *J.S. v. State*, 843 N.E.2d 1013, 1017 (Ind. Ct. App. 2006). The foregoing evidence is sufficient to show that House forcibly resisted law enforcement under I.C. § 35-44-3-3.

CONCLUSION

Based on the foregoing, we conclude that the State presented sufficient evidence beyond a reasonable doubt to prove that House forcibly resisted law enforcement.

Affirmed.

BAKER, C.J., and FRIEDLANDER, J., concur.