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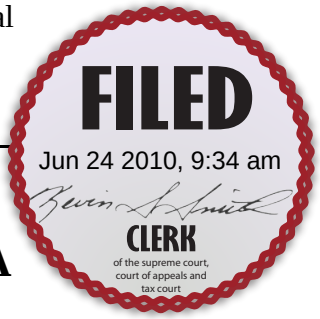

IN THE COURT OF APPEALS OF INDIANA

ANDROUCKOO JONES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0911-CR-1108
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Kimberly J. Brown, Judge
Cause No. 49G16-0908-CM-74691

June 24, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Androuckoo Jones appeals his convictions for Domestic Battery, as a Class A misdemeanor, and Resisting Law Enforcement, as a Class A misdemeanor, following a bench trial. On appeal, he contends that the State did not present sufficient evidence to support either of his convictions.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 21, 2009, Jones and his wife, Linda, argued, and a physical altercation ensued. Jones, who was intoxicated, slapped Linda in her face three times. Linda then threatened Jones with a knife, but she did not use the knife and threw it into a closet. Jones grabbed a baseball bat and hit Linda with the bat on her arm, and he jabbed Linda with the bat in her back and side. Jones threatened to hit Linda in the head with the bat, but he ultimately put the bat down.

At approximately 8:30 p.m., police responded to the residence after receiving an anonymous telephone call reporting a disturbance there. Two officers in full uniform arrived, and Linda met them at the door. Linda was crying and visibly upset, and one of the officers noticed that Linda's cheek was "slightly red." Transcript at 16. Linda told the officers that she and Jones had been in a "physical altercation" but that he had left the residence. Id. at 18. Shortly after Linda had described the clothing Jones was wearing that day, Jones entered the kitchen through a back door to the residence. Linda pointed to the man and said to the officers, "That's him." Id.

After Jones had entered the house by "violently" opening the door and "rushing" towards Linda and the officers, Officer Edward Fiscus ordered Jones to the ground. Id.

Jones did not comply with the officer's order, but continued towards Linda and the officers. Officer Fiscus repeated the order three or four times, but Jones refused to comply and "advanc[ed]" towards Linda and the officers. Id. at 19. At that point, Officer Fiscus "delivered a common peroneal strike to [Jones'] upper . . . right leg." Id. Jones fell to his knees, but he refused the officers' command to lie on the floor. Jones was eventually lying on the floor, but he refused the officers' commands to present his hands for cuffing. Jones kept his hands underneath his body. As the officers struggled with Jones to get his hands free, Jones "tensed up" his arms to try to keep his hands under his body. Id. at 12. The officers were eventually able to pull his hands free and place cuffs on his wrists.

The State charged Jones with domestic battery, as a Class A misdemeanor; battery, as a Class A misdemeanor; and resisting law enforcement, as a Class A misdemeanor. Following a bench trial, the trial court found Jones guilty as charged, but entered judgment of conviction only on the domestic battery and resisting law enforcement charges. This appeal ensued.

DISCUSSION AND DECISION

When reviewing the claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

Domestic Battery

To prove domestic battery, as a Class A misdemeanor, the State was required to prove beyond a reasonable doubt that Jones did knowingly in a rude, insolent or angry manner touch Linda, who is or was Jones' spouse, and that said touching resulted in pain. See Ind. Code § 35-42-2-1.3. On appeal, Jones contends that the evidence is insufficient to support his conviction for domestic battery because Linda's testimony was incredibly dubious. We cannot agree.

The "incredible dubiosity rule" is limited to cases where a sole witness presents inherently contradictory testimony which is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the defendant's guilt. Tillman v. State, 642 N.E.2d 221, 223 (Ind. 1994). Here, while Jones points out inconsistencies in Linda's testimony, her testimony was not inherently contradictory or equivocal.[1] And there is no evidence that she was coerced into testifying against him. Moreover, there is circumstantial evidence of Jones' guilt given Officer Fiscus' testimony that Linda was "very upset" and "crying" when they arrived and that her face was "slightly red." Transcript at 16. We conclude that the incredible dubiosity rule does not apply here. See Timberlake v. State, 690 N.E.2d 243, 252 (Ind. 1997), cert. denied, 525 U.S. 1073 (1999). As such, Jones' contention on this issue must fail. The State presented sufficient evidence to support Jones' domestic battery conviction.

[1] Jones points out the following inconsistencies in Linda's story: she testified that the battery occurred on August 21, but she listed August 22 in her application for an order of protection; she testified that the battery occurred over the course of a day and that the officers arrived at around 5:00 p.m., but the probable cause affidavit shows that the officers arrived at 8:30 p.m.; and while Officer Fiscus testified that he "believe[d] it was the left side" of Linda's face that was red, Linda testified that Jones slapped her on the right side of her face. But those inconsistencies are merely in the details that go to the weight of the evidence and do not render Linda's testimony inherently contradictory.

Resisting Law Enforcement

To prove resisting law enforcement, as a Class A misdemeanor, the State was required to prove beyond a reasonable doubt that Jones knowingly or intentionally forcibly resisted, obstructed, or interfered with police officers while they were lawfully engaged in the execution of their duties. See Ind. Code § 35-44-3-3. On appeal, Jones contends that the State did not present evidence sufficient to prove that he used force in resisting the police officers. We cannot agree.

In Spangler v. State, 607 N.E.2d 720 (Ind. 1993), our Supreme Court examined the elements of the crime of resisting law enforcement. As the Court recently explained in Graham v. State, 903 N.E.2d 963, 965 (Ind. 2009),

> [In Spangler,] Justice DeBruler noted that the word "forcibly" modifies "resists, obstructs, or interferes" and that force is an element of the offense. He explained that one "forcibly resists" when "strong, powerful, violent means are used to evade a law enforcement official's rightful exercise of his or her duties." Spangler had refused to accept service of process from an officer, walking away from the officer in the face of demands that he accept a protective order. [The Supreme] Court held that such action was resistance to authority but not "forcible" resistance. "It is error as a matter of law to conclude . . . that 'forcibly resists' includes all actions that are not passive." Spangler's conviction was reversed.

(Emphasis added). And our Supreme Court has observed:

> The force involved need not rise to the level of mayhem. In Johnson v. State, 833 N.E.2d 516, 517 (Ind. Ct. App. 2005), a defendant in custody "pushed away with his shoulders while cursing and yelling" when the officer attempted to search him. As officers attempted to put him into a police vehicle, Johnson "stiffened up" and the police had to get physical in order to put him inside. The Court of Appeals correctly held that Johnson's actions constituted forcible resistance.

Id. at 965-66.

In Graham, our Supreme Court distinguished Johnson and reversed the defendant's conviction. The evidence showed that Graham refused to present his hands

for cuffing after officers repeatedly yelled at him to do so. Officers "proned him out, belly down on the ground and . . . then put his arms behind his back and handcuffed him." Id. at 965. The Court held that refusing to present one's arms for cuffing, without more, does not constitute use of force. Specifically, the Court stated, "[w]hile 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.

Here, the officers testified that they struggled with Jones to get his wrists cuffed. And Officer Christopher Mills testified that, as he and Officer Fiscus were trying to pull Jones' arms out from underneath his body, Jones "was tensed up in trying [to] keep [his arms and hands] under him." Transcript at 12. On appeal, Jones challenges the notion that "every 'stiffening' or 'tensing'" of one's arms is sufficient evidence of forcible resistance. Brief of Appellant at 8. In particular, he asserts that "[a] person knocked to the ground, who falls on top of his hands, and who is pounced on by police officers certainly cannot be said to be anything but 'tense.'" Id. at 9.

But our Supreme Court has held that a defendant's stiffening of his arms to resist handcuffs is a sufficient show of force to support a resisting law enforcement conviction. See Graham, 903 N.E.2d at 965-66. Here, the evidence shows that Jones "tensed" his body in his struggle with the police officers. That evidence is sufficient to prove that Jones forcibly resisted arrest. Jones cannot prevail on this issue.

Affirmed.

VAIDIK, J., and BROWN, J., concur.