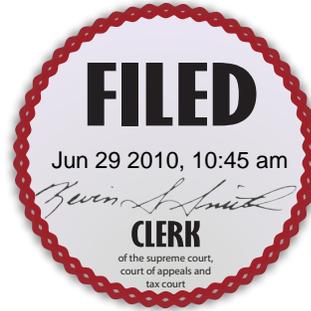


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**IN THE
COURT OF APPEALS OF INDIANA**

SPENCER JONES,)
)
Appellant-Defendant,)
)
vs.) No. 49A05-0912-CR-719
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Linda E. Brown, Judge
Cause No. 49F10-0901-CM-13447

June 29, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

On appeal, Spencer Jones argues that the State's evidence is insufficient to support his conviction for Resisting Law Enforcement¹ as a class A misdemeanor.

We affirm.

The facts most favorable to the conviction reveal that on January 19, 2009, at approximately 3:00 a.m., Officers Ronald Clayton and Damon Young of the Indianapolis Metropolitan Police Department were dispatched to the 1600 block of North Temple in Marion County after a report of shots fired from a white SUV. The officers were nearby and had heard the shots. When they arrived on the street, the officers observed a white Escalade with its headlights on parked illegally and noted there were two occupants inside. The officers approached the vehicle and ordered the occupants to show their hands because they were in the area where the shots had been fired. Jones was the passenger in the vehicle. Neither Jones nor the driver complied with the officers' instructions. The officers repeatedly asked Jones to show his hands, but he refused, keeping his hands under the dashboard. The officers observed Jones move back and forth toward the center console several times and then upward, making furtive gestures.

Because the gun had not been found and the scene was not secured, Jones's actions caused Officer Young to be concerned for his safety. Given the circumstances, Officer Young decided to use a taser to subdue Jones. When Officer Young tased Jones, Jones jumped from the passenger side to the driver's side of the vehicle, crossing the center console. The officers again ordered Jones to get out of the vehicle, but Jones continued to refuse. Another officer who had responded to the scene eventually pulled Jones from the

¹ Ind. Code Ann. § 35-44-3-3 (West, Westlaw through 2009 1st Special Sess.).

vehicle. As the officers attempted to put Jones in handcuffs, Jones “was moving his arms in a manner that would not allow [the officers] to put his hands behind his back.” *Transcript* at 72. Because the officers continued to struggle with Jones, a canine was used to subdue him. Jones was then placed in handcuffs.

On January 19, 2009, the State charged Jones with carrying a handgun without a license and resisting law enforcement, both as class A misdemeanors. The trial court held a bench trial on November 19, 2009. Following the State’s case-in-chief, Jones moved for judgment on the evidence with regard to the handgun charge. The trial court granted the motion and found Jones not guilty on that charge. At the conclusion of the evidence, the court found Jones guilty of resisting law enforcement as a class A misdemeanor. The trial court sentenced Jones to 1 year in jail with 305 days suspended.

Jones argues that the evidence is insufficient to support his conviction for resisting law enforcement. Specifically, Jones argues that the evidence does not establish that he forcibly resisted the officers. When considering a challenge to the sufficiency of evidence to support a conviction, we respect the fact-finder’s exclusive province to weigh the 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 conviction, 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)).

To sustain Jones's conviction for resisting law enforcement, the State's evidence must prove beyond a reasonable doubt that Jones knowingly or intentionally forcibly resisted, obstructed, or interfered with Officer Young while Officer Young was lawfully engaged in the execution of his official duties. *See* I.C. § 35-44-3-3. A person forcibly resists "when strong, powerful, violent means are used to evade a law enforcement official's rightful exercise of his or her duties." *Graham v. State*, 903 N.E.2d 963, 965 (Ind. 2009) (quoting *Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993)). The force used, however, need not rise to the level of mayhem. *Graham v. State*, 903 N.E.2d 963.

Our Supreme Court has held that merely refusing to present one's hands for handcuffing does not suffice to prove use of force. *See id.* Nevertheless, our Supreme Court noted that modest resistance, such as stiffening one's arms when an officer attempts to grab hold to position them for cuffing, does constitute forcible resistance. *See id.* (citing *Johnson v. State*, 833 N.E.2d 516 (Ind. Ct. App. 2005)).

Here, the officers arrived in the vicinity of shots fired from a white SUV and discovered a white Escalade with its headlights on parked illegally. The officers repeatedly ordered Jones to show his hands, and he refused. Instead, Jones moved his hands back and forth toward the center console, and then upward, making furtive gestures. Given the circumstances, the officers were concerned for their safety because the gun had not been found and the scene had not been secured. The officers used a taser in an attempt to gain Jones's compliance, but he continued to refuse to show his hands. Jones was eventually pulled from the SUV. Officer Young testified that after Jones was pulled from the vehicle, he tried to place Jones in handcuffs but was unable to because Jones "was moving his arms in

a manner that would not allow [the officers] to put his hands behind his back.” *Transcript* at 72. A canine unit had to be used to subdue Jones to a point where officer could place him in handcuffs.

Jones contends that Officer Young’s testimony is equivocal and does not describe his actions with sufficient particularity to permit the trier of fact to conclude that he forcibly resisted. We disagree. Officer Young’s testimony clearly establishes that Jones was moving his arms in such a way as to physically thwart Officer Young’s efforts to place him in handcuffs. This constitutes more the passive resistance and clearly demonstrates a modest level of resistance required to establish that Jones forcibly resisted Officer Young’s attempts to place him in handcuffs. The evidence is sufficient to support Jones’s conviction for resisting law enforcement as a class A misdemeanor.

Judgment affirmed.

KIRSCH, J., and ROBB, J., concur.