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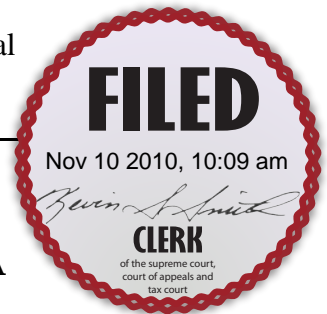
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**IN THE
COURT OF APPEALS OF INDIANA**

MAMADOU SOW,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 49A02-1004-CR-516

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Richard E. Sallee, Senior Judge
Cause No. 49F10-0911-CM-94941

November 10, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Mamadou Sow (“Sow”) appeals after a bench trial from his conviction of resisting law enforcement¹ as a Class A misdemeanor. Sow presents the following restated issue for our review: whether there was sufficient evidence of flight to support Sow’s conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to the conviction are that on November 13, 2009, Indianapolis Metropolitan Police Officer Brian Silcox (“Officer Silcox”) was traveling eastbound on Broad Ripple Avenue in Indianapolis, Indiana and was attempting to turn onto Guilford Avenue, when he saw Sow’s cab stopped in the middle of the road. Sow was leaning into the back seat of the cab looking for a customer’s lost driver’s license. Officer Silcox pulled up behind Sow’s cab and honked his horn. Sow climbed back into the driver’s seat and drove off. Officer Silcox initiated a traffic stop and wrote a ticket for obstructing traffic. Sow accepted the traffic ticket after twice declining to take the ticket from the officer.

Officer Silcox testified that, after he returned to his squad car, Sow exited his vehicle and approached the officer’s squad car flailing his arms and yelling. Officer Silcox twice ordered Sow to return to his cab before he made the decision to withdraw the ticket and instead arrest Sow for obstructing traffic. The officer instructed Sow to place his hands behind his back, but Sow returned to his cab and sat inside. Officer Silcox repeatedly ordered Sow to exit the vehicle before Sow rolled out of the cab to the ground placing his arms to the side. Officer Silcox arrested Sow, who was charged with obstructing traffic as a

¹See Ind. Code § 35-44-3-3(a)(3).

Class A misdemeanor and resisting law enforcement as a Class A misdemeanor.

A bench trial was held on March 16, 2010. At the conclusion of the State's case-in-chief, the trial court entered a judgment on the evidence in Sow's favor as to the obstructing traffic charge. At the conclusion of the trial, the trial court found Sow guilty of resisting law enforcement and sentenced him to sixty days, with fifty-eight days suspended. Sow now appeals.

DISCUSSION AND DECISION

Sow challenges the sufficiency of the evidence supporting his conviction of resisting law enforcement. He specifically challenges the sufficiency of the evidence that he fled.

Our standard of review for a sufficiency of the evidence claim is well-settled. In reviewing such a claim, we will affirm the conviction unless, considering only the evidence and all reasonable inferences favorable to the judgment, and neither reweighing the evidence nor judging the credibility of the witnesses, we conclude that no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *See Blackman v. State*, 868 N.E.2d 579, 583 (Ind. Ct. App. 2007).

Indiana Code section 35-44-3-3(a)(3) provides in relevant part that a person who knowingly or intentionally flees from a law enforcement officer after the officer has, by visible or audible means, identified himself and ordered the person to stop, commits resisting law enforcement, a Class A misdemeanor. Sow exited his cab and challenged the issuance of his traffic ticket. Officer Silcox ordered Sow to return to his vehicle, but Sow continued to challenge the ticket. The officer then made the decision to withdraw the ticket and arrest Sow for obstructing traffic. Instead of placing his hands behind his back, as instructed to do

by Officer Silcox, Sow returned to his cab, took a seat inside, and attempted to close the door. Ultimately, after numerous requests that he exit his cab, Sow rolled to the ground placing his arms at his side. The evidence here was sufficient to support the conviction, as the record reflects that Sow disobeyed a command to place his arms behind his back, and instead, returned to his cab, took a seat inside, and attempted to shut the door to the cab. *See Wellman v. State*, 703 N.E.2d 1061, 1063 (Ind. Ct. App. 1998) (flight means a knowing attempt to escape law enforcement when aware that officer has ordered defendant to stop or remain in place). To “flee from justice” has been defined as “concealing one’s self . . . with intent . . . to avoid arrest, detention, or punishment for some criminal offense.” *Id.* (quoting Black’s Law Dictionary (6th ed. 1990)).

That said, none of Sow’s actions until Officer Silcox’s announcement that he was placing Sow under arrest for obstructing traffic, constituted resisting law enforcement.² Judgment on the evidence was entered in Sow’s favor as to the obstructing traffic charge. Nonetheless, it is well settled that an individual may not flee from a police officer who has ordered the person to stop, regardless of the apparent or ultimate lawfulness of the officer’s order. *Cole v. State*, 878 N.E.2d 882, 885 (Ind. Ct. App. 2007).

Affirmed.

RILEY, J., concurs.

BAILEY, J., concurs in result without separate opinion.

² Although we affirm Sow’s conviction, we note that the actions of the arresting officer contributed to this altercation and that this entire interaction may have been avoided had greater sensitivity been shown by either participant.