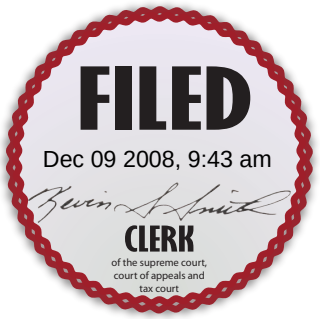

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IN THE
COURT OF APPEALS OF INDIANA

JOHN FAUX,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0804-CR-216
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa Borges, Judge
Cause No. 49F15-0702-FD-22072

December 9, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

John M. Faux appeals his conviction, after a bench trial, for resisting law enforcement, as a class A misdemeanor.

We affirm.

ISSUE

Whether sufficient evidence exists to support his conviction.

FACTS

On February 5, 2007, Indianapolis Fire Department medics were called to Faux's apartment in response to an apparent drug overdose. When they arrived at Faux's upstairs apartment, he was uncooperative, "stubborn and resistent [sic]," and refused treatment. (Tr. 28). Faux became combative and punched one of the firefighters in the groin. Lieutenant Dave Cook of the Indianapolis Fire Department called for police assistance. Soon thereafter, Lieutenant Mark McCardia of the Indianapolis Metropolitan Police Department was dispatched to the scene.

When Lieutenant McCardia entered Faux's apartment, he observed two firefighters holding Faux down on the couch. Faux was "struggling," and the firefighters had to "keep him forcefully pinned on the couch." (Tr. 11). Lieutenant McCardia approached Faux and advised him that he was under arrest for battery on a firefighter. Lieutenant McCardia explained that if Faux did not cooperate by walking down the stairs, he "would have to take him by force and there would be a good chance he'd get hurt." (Tr. 12). Faux initially appeared willing to cooperate; however, when Lieutenant McCardia instructed the firemen to release Faux and attempted to handcuff him, Faux

"tensed up" and began "jerking and pulling away." (Tr. 22, 21). Lieutenant McCardia then forced Faux to the floor using an arm-bar take down maneuver. A security guard helped Lieutenant McCardia to pull Faux's arms behind his back so that Lieutenant McCardia could handcuff him. Even after being handcuffed, Faux continued to struggle. Lieutenant McCardia had to "physically carry him, sort of drag him down the stairs, [and] put him on the cot for the fire department." (Tr. 13).

On February 8, 2007, the State charged Faux with one count of class D felony battery[1] and one count of class A misdemeanor resisting law enforcement. On December 20, 2007, the trial court conducted a bench trial on the resisting law enforcement charge. Lieutenants McCardia and Cook testified to the foregoing facts. Faux and his daughter, Jessica, testified for the defense.

Jessica testified that she had witnessed the incident. She testified that when Lieutenant McCardia arrived, Faux was "sitting on the couch incapable of really doing much." (Tr. 42). Jessica testified further that Faux was able to speak coherently when the fire personnel arrived, but was incoherent, and having difficulty standing and walking, by the time Lieutenant McCardia arrived. She testified that Faux had taken his medications which "sometimes . . . cause[d] him to be physically inept [sic] of doing anything." (Tr. 42). She testified that when Faux "didn't stand up as ordered, Lieutenant McCardia picked him up and threw him on the ground and proceeded to handcuff him." (Tr. 45).

[1] On October 24, 2007, the trial court granted Faux's motion to dismiss the battery charge.

Faux testified that he could not have resisted Lieutenant McCardia even if he had wanted to. He explained that side-effects from his anti-anxiety, anti-smoking, and heart medications had rendered him unable to speak or stand, and had also impaired his balance and strength. (Tr. 53). He denied resisting Lieutenant McCardia's efforts to handcuff him, saying that Lieutenant McCardia was able to restrain him "[in] about three seconds because he just grabbed me and I was on the ground and . . . that was all." (Tr. 56). Under cross examination, he testified that he had asked the firefighters to leave, and then "upped the ante with vulgarities" when they did not comply. (Tr. 59). He also admitted that he had "struggl[ed]" with the medics who held him down on the couch. (Tr. 62).

The trial court found Faux guilty of class A misdemeanor resisting law enforcement and imposed a three hundred and sixty-five day sentence, with three hundred and sixty-three days ordered suspended. Faux now appeals.

DECISION

Faux argues that the evidence is insufficient to support his conviction. Specifically, he argues that the State failed to prove beyond a reasonable doubt that he intentionally and forcibly resisted arrest because he was under the influence of medications that rendered him too weak to resist. We disagree.

Our standard of review for sufficiency claims is well-settled. 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 verdict, 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)). Further, it is well-established that "the uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal." *Toney v. State*, 715 N.E.2d 367, 369 (Ind. 1999).

In order to convict Faux of resisting law enforcement as a class A misdemeanor, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally forcibly resisted, obstructed, or interfered with a law enforcement officer or a person assisting the officer while the officer was lawfully engaged in the execution of his duties as an officer. I.C. § 35-44-3-3.

Our supreme court has held that, under Indiana Code section 35-44-3-3, any action to resist must be done with force. *Spangler v. State*, 607 N.E.2d 720, 724 (Ind. 1993). A defendant "forcibly resists" law enforcement when "strong, powerful, violent means" are used to evade an officer's lawful exercise of his duties. *Id*. at 723. Thus, "some form of violent action toward another" must occur, and if a defendant merely stands his ground, this requirement is not satisfied. *Id*. at 724.

Here, the facts most favorable to the conviction reveal that Lieutenant McCardia advised Faux that he was under arrest for battery on a firefighter and asked him to stand up to be handcuffed. When Lieutenant McCardia attempted to handcuff Faux, Faux "started struggling . . . to pull his arms away from [Lieutenant McCardia]." (Tr. 12).

Lieutenant McCardia, who stands 6'3" and weighs 330 pounds, required the assistance of a security guard to wrestle the relatively diminutive Faux, who weighed 153 pounds, to the ground. *See Bringle v. State*, 745 N.E.2d 821, 827 (Ind. Ct. App. 2001) (upholding the defendant's conviction for resisting law enforcement where the evidence showed that the defendant tried to keep his wrists from the police as they attempted to handcuff him).

Based upon the foregoing facts, we conclude that the State presented sufficient evidence for a reasonable factfinder to find Faux guilty of resisting law enforcement.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.