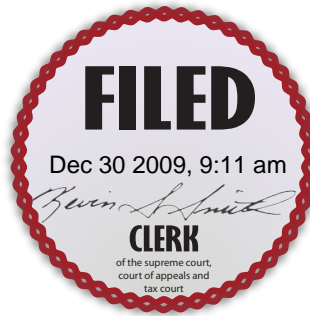


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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CYRUS BROWN, )

Appellant-Defendant, )

vs. )

STATE OF INDIANA, )

Appellee-Plaintiff. )

No. 71A05-0906-CR-320

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APPEAL FROM THE ST. JOSEPH SUPERIOR COURT  
The Honorable John M. Marnocha, Judge  
Cause No. 71D02-0901-FD-16

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**December 30, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Following a jury trial, Appellant-Defendant Cyrus Brown was convicted of Class D felony Residential Entry<sup>1</sup> and Class A misdemeanor Resisting Law Enforcement,<sup>2</sup> for which he received an aggregate sentence of two years in the Department of Correction. Upon appeal, Brown challenges the sufficiency of the evidence to support his conviction for resisting law enforcement. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On the evening of January 4, 2009, seventy-year-old Sandra Hochstedler, who had been splitting wood in the garage of her home on Portage Road in South Bend, heard “yelling” noises coming from the road. Tr. p. 128. As Hochstedler walked up the steps to her house, she noticed a male later identified to be Brown running in her back yard. Brown ran toward Hochstedler, who ran inside her house and bolted the door shut. Hochstedler grabbed a handgun and called 911 from her bedroom. As she talked to the 911 operator, Hochstedler heard a loud crash and later saw that Brown had forced his way into her house through a family room window, which he had shattered. Hochstedler confronted Brown as he entered her kitchen, pointing her gun at him. Hochstedler told the 911 operator that she did not want to kill Brown but was prepared to do so if necessary.

As Hochstedler held Brown at bay, authorities arrived and announced their presence. Brown initially assumed a “combative stance” but cooperated with authorities when told to lie on the floor. Tr. p. 181. Brown was placed under arrest. Officer

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<sup>1</sup> Ind. Code § 35-43-2-1.5 (2008).

<sup>2</sup> Ind. Code § 35-44-3-3 (2008).

Gregory Donley of the St. Joseph County Sheriff's Department determined that Brown, who had just been in a vehicle accident, needed medical attention. Apparently Brown, who had taken multiple sleeping pills days earlier and was admittedly "a little bit" paranoid and delusional at the time, had believed he was being followed while driving on Portage Road, which caused him to speed and ultimately crash his vehicle just before going to Hochstedler's house. Tr. p. 225. Brown initially refused to be taken to the hospital, but Officer Donley insisted that he go based upon department policy. Officer Donley placed Brown in the back of his patrol car and transported him to the hospital. Brown was handcuffed behind his back. Approximately three separate times, as Officer Donley waited with and accompanied Brown for treatment,<sup>3</sup> Brown was "combative." Tr. p. 186. According to Officer Donley, Brown became agitated, began breathing heavily, and stood up in an effort to take his handcuffed hands from behind his back. Brown does not dispute that, in an attempt to loosen his handcuffs, he succeeded in forcing one of his legs through the handcuffs such that the handcuffs were not behind his back but between his legs. Officer Donley, who deemed Brown "a handful to handle," physically restrained Brown and called for backup units in response. Tr. p. 187.

On January 6, 2009, the State charged Brown with Class D felony residential entry and Class A misdemeanor resisting law enforcement. Following an April 30, 2009 jury trial, Brown was found guilty as charged. Following a May 20, 2009 sentencing hearing, the trial court entered judgment of conviction and sentenced Brown to consecutive sentences of eighteen months for residential entry and six months for resisting law

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<sup>3</sup> Brown was treated for a broken tibia and possibly broken ankle for which he was given a cast.

enforcement, with both sentences to be served in the Department of Correction. This appeal follows.

### **DISCUSSION AND DECISION**

Upon appeal, Brown claims that there is insufficient evidence to support his conviction for resisting law enforcement. In evaluating the sufficiency of the evidence to support Brown's conviction, we do not reweigh the evidence or judge the credibility of the witnesses. *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. We consider only the evidence which supports the conviction and any reasonable inferences which the trier of fact may have drawn from the evidence. *Id.* We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. *Id.* It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Jones v. State*, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998).

Indiana Code section 35-44-3-3 provides that a person commits the crime of resisting law enforcement if he knowingly or intentionally "forcibly resists, obstructs, or interferes with a law enforcement officer" who is lawfully engaged in the execution of his duties. Brown was charged with "resisting" Officer Donley by struggling with him. In *Graham v. State*, 903 N.E.2d 963, 965 (Ind. 2009), the Indiana Supreme Court, reiterating that force is an element of the offense of resisting law enforcement, reversed a defendant's conviction on the grounds that his simple refusal to present his arms for cuffing did not establish the necessary force. In reaching this conclusion, however, the

*Graham* court noted that a defendant's use of relatively minor force, such as stiffening his arms when an officer grabs them to cuff them, does establish the requisite force. *Id.* at 966.

Brown claims that he complied with officers' commands at Hochstedler's residence and that his efforts to move his handcuffed hands to the front of his body while at the hospital did not involve force against the police. To the extent Brown suggests that his actions were not adequately forceful, we cannot agree. The mere act of stiffening one's arms to prevent handcuffing constitutes adequate force. *See id.* Here, Brown, who was agitated and breathing heavily, actively contorted his body and moved his limbs in such a manner as to reposition his hands, which were handcuffed behind his body, to the front of his body. In light of *Graham*, this is adequate use of force.

To the extent Brown bases his argument upon the claim that his efforts were directed at the handcuffs rather than at the police, we are similarly unpersuaded that he is entitled to relief. In *Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993), the Indiana Supreme Court interpreted forcible resistance as the use of "strong, powerful, violent means . . . to evade a law enforcement official's rightful exercise of his or her duties." At their most basic level, the forceful nature of Brown's efforts was perhaps specifically targeted against his handcuffs. In the larger view, however, these efforts were similarly targeted against Officer Donley, who had arrested Brown and forced him to go to the hospital, and who accompanied him during his medical treatment and was required to physically restrain Brown as Brown repeatedly manipulated the cuffs around his body. Essentially, Brown aggressively sought to undo the very means by which Officer Donley

exercised his law enforcement authority. To the extent this constitutes an indirect application of force, we are persuaded that it satisfies the requirements of Indiana Code section 35-44-3-3.

The judgment of the trial court is affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.