ATTORNEYS FOR APPELLANT:

DAVID M. HENN
JAMES T. FLANIGAN
McClure McClure Davis & Henn
Greenwood, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ANN L. GOODWIN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

TIMOTHY KILBOURNE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0704-CR-217
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable John A. Kitley, Judge Pro Tempore
Cause No. 49F07-0605-CM-85610

December 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Timothy Kilbourne appeals his conviction for resisting law enforcement as a class A misdemeanor.[1] Kilbourne raises one issue, which we revise and restate as whether the evidence is sufficient to sustain his conviction. We affirm.

The relevant facts follow. On March 8, 2006, Kilbourne was riding his daughter's dirt bike off road in an industrial complex in Marion County. The complex contains fitness trails open to the public for walking or jogging but not for the operation of motorized vehicles. Speedway Police Department Captain Alan Jones approached Kilbourne in a vehicle marked as a "police interceptor," activated his emergency lights, and informed Kilbourne that he was an off duty police officer working for the complex. Transcript at 5. Though wearing blue jeans and a t-shirt, Captain Jones had his badge around his neck. He asked Kilbourne not to ride on the property, to which Kilbourne responded, "Fuck you. Stop me," and then "sped away." Id. at 5. Captain Jones "yelled for him to stop and come back" because he was "going to give him the criminal trespass warning," but Kilbourne "continued to drive away." Id. at 11-12. When Captain Jones encountered Kilbourne later, he asked Kilbourne to approach his car, but Kilbourne again yelled "fuck you" and rode away. Id. at 6.

The State charged Kilbourne with resisting law enforcement and criminal trespass[2] as class A misdemeanors. After a bench trial on March 20, 2007, the trial court found

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[1] Ind. Code § 35-44-3-3 (2004) (subsequently amended by Pub. L. No. 143-2006, § 2 (eff. July 1, 2006)).

Kilbourne not guilty of criminal trespass but guilty of resisting law enforcement, sentencing him to a term of 365 days with 361 days suspended.

The sole issue is whether the evidence is sufficient to sustain Kilbourne's conviction. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Id.

Indiana Code § 35-44-3-3(a)(3) provides that "[a] person who knowingly or intentionally . . . flees from a law enforcement officer after the officer has, by visible or audible means, including operation of the law enforcement officer's siren or emergency lights, identified himself or herself and ordered the person to stop . . . commits resisting law enforcement, a Class A misdemeanor . . . ." Thus, to convict Kilbourne of resisting law enforcement as a class A misdemeanor, the State needed to prove that Kilbourne knowingly or intentionally fled from Captain Jones after Captain Jones identified himself and ordered Kilbourne to stop.

Kilbourne contends that Captain Jones "did not tell . . . Kilbourne that he was under arrest or otherwise not free to leave" and that "there was no direct evidence that . . .

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[2] Ind. Code § 35-43-2-2 (2004).

Kilbourne knowingly or intentionally disobeyed a command to stop."[3] Appellant's Brief at 9-10. To the contrary, the evidence most favorable to the conviction reveals that Captain Jones approached Kilbourne in a vehicle marked as a "police interceptor," activated his emergency lights, and informed Kilbourne that he was an off duty police officer working for the complex. Transcript at 5. Though wearing blue jeans and a t-shirt, Captain Jones had a badge around his neck. He asked Kilbourne not to ride his motorized vehicle on the property, to which Kilbourne responded, "fuck you, stop me," and then "sped away." Id. at 5. Captain Jones "yelled for him to stop and come back" because he was "going to give him the criminal trespass warning," but Kilbourne "continued to drive away." Id. at 11-12. When Captain Jones encountered Kilbourne later, he asked Kilbourne to approach his car, but Kilbourne again yelled "fuck you" and rode away. Id. at 6. Kilbourne's argument is merely a request that we reweigh the evidence, which we cannot do. We therefore conclude that there exists evidence of probative value from which a reasonable trier of fact could find Kilbourne guilty beyond a reasonable doubt of resisting law enforcement as a class A misdemeanor.[4] See Harris

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[3] Kilbourne also argues that the State failed to prove that he resisted law enforcement because "[Captain] Jones was not acting as a police officer engaged in his official duty. Rather, Jones was acting solely as a private security guard hired by [the industrial complex]." Appellant's Brief at 6. However, the language of Ind. Code § 35-44-3-3(a)(3) does not require that a law enforcement officer be engaged in his official duty for the section to apply.

[4] Kilbourne also argues that the trial court impermissibly shifted the burden of proof to him when it stated that it "was not convinced that some of . . . Kilbourne's knowledge and experience would not recognize this to be a police vehicle even if the red and blues weren't going when it says police interceptor on the back and has an antenna." Transcript at 58. Specifically, he argues that "the trial court

v. State, 831 N.E.2d 848, 851 (Ind. Ct. App. 2005) (holding that the evidence is sufficient to sustain defendant's conviction for resisting law enforcement), trans. denied.

For the foregoing reasons, we affirm Kilbourne's conviction for resisting law enforcement as a class A misdemeanor.

Affirmed.

RILEY, J. and FRIEDLANDER, J. concur

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clearly stated that the burden of proof had shifted to [him] to convince the court that he did not recognize the car as being a police vehicle." Appellant's Brief at 11. We note that the trial court made this statement while reporting its findings at the end of the bench trial. The trial court was simply stating that it had weighed the evidence and found Captain Jones's testimony that "he had a badge around his neck and his red and blues were going" more credible. Transcript at 58. In making this finding, the trial court did not shift the burden to Kilbourne to prove that he was innocent.