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**IN THE  
COURT OF APPEALS OF INDIANA**

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DARRELL TAYLOR,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 49A02-0701-CR-27

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Linda E. Brown, Judge  
Cause No. 49F10-0607-CM-121430

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**August 6, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## Case Summary

Darrell Taylor (“Taylor”) appeals his convictions for resisting law enforcement as a Class A misdemeanor and disorderly conduct as a class B misdemeanor. Concluding that the evidence is sufficient to sustain Taylor’s convictions, we affirm the judgment of the trial court.

## Facts and Procedural History

In the early afternoon of June 16, 2006, Indianapolis Police Officer Steven Hayth (“Officer Hayth”) was standing next to his police car in the parking lot of Community East Hospital when he heard someone from a distance say, “Yeah, that’s him.” Tr. p. 7. Officer Hayth, who could not initially see who had made the comment but thought that the comment was directed toward him, went inside the emergency room garage area, which was about twenty feet from his police car, to wait for the people to pass and see who had made the comment. When a couple approached his car, Officer Hayth recognized Taylor and his fiancé, Acacia Cushingberry, from an incident a couple of weeks prior when Child Protective Services sent him to Taylor’s residence on a “check of welfare” run. *Id.* at 8. Officer Hayth then saw and heard Taylor spit on the driver’s side rear door of his police car. Officer Hayth approached Taylor and told him to place his hands behind his back. Taylor became “argumentative” with Officer Taylor and asked why he was being handcuffed. *Id.* at 9. Taylor placed his hands behind his back but “was still be[ing] argumentative.” *Id.* at 10. Officer Hayth handcuffed Taylor, told Taylor that he was under arrest for spitting on the police car,<sup>1</sup> and walked him back to the

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<sup>1</sup> Taylor’s act of spitting on the police car would have constituted criminal mischief. *See Haverstick v. State*, 648 N.E.2d 399, 400-01 (Ind. Ct. App. 1995).

police car. Officer Hayth asked Taylor several times to sit down on the ground and—because he knew that Taylor, who was wearing a soft cast on his leg, had a gunshot wound in his leg—offered to assist Taylor to the ground. After Taylor repeatedly refused, Officer Hayth told Taylor to lean across the front of his car. Instead of leaning across the car, Taylor jumped up and sat on the hood of the car. Officer Hayth pulled Taylor off the car and told him to put his stomach on the hood of the car. Taylor then “complain[ed] that he couldn’t sit on the ground because of his leg.” *Id.* at 24. Officer Hayth grabbed Taylor’s shirt and laid him across the front of the car. Taylor told Officer Hayth to “get off” him, and he stood up and “turn[ed] on” the officer. *Id.* at 13. Officer Hayth then grabbed Taylor, “took him down to the ground,” and placed him flat on his stomach on the ground. *Id.*

Once Officer Hayth had Taylor on the ground, Taylor began “trying to turn over” and “trying to get up off of the ground.” *Id.* at 14. Officer Hayth told Taylor to “stop resisting,” to “stop trying to turn over,” and to “stay on the ground.” *Id.* Officer Hayth tried to get control of Taylor by putting one leg across Taylor’s lower back and leaning on Taylor to control his shoulders, but Taylor still tried to turn and get up. Taylor yelled that he did not spit on the officer’s car and that he did not need to be arrested, and Taylor was “just plain vulgar.” *Id.* at 16. The volume of Taylor’s yelling was “very loud” and “pretty much drew the crowd from the inside of the hospital to the outside.” *Id.* at 17. Officer Hayth “had to pretty much yell at [Taylor] also to stop yelling.” *Id.*

During the time that Officer Hayth was arresting Taylor, Cushingberry was also yelling at the officer and telling him that Taylor did not spit on his car. Officer Hayth

told Cushingberry to move away and called for backup. Officer Eli McAllister (“Officer McAllister”), who responded to Officer Hayth’s call for back up, arrived on the scene and saw “a large crowd” of people—specifically, fifteen to twenty people—standing near the emergency room entrance. *Id.* at 28. Officer McAllister also saw “a good bit of chaos,” *id.* at 30, and heard “a lot of screaming,” including “screaming” from Taylor, *id.* at 34. When Officer McAllister arrived on the scene, he saw that Taylor and Officer Hayth were on the ground and that Taylor “was yelling,” “trying to turn around and get back up off the ground, and push[ing] himself with [h]is body rotating it around to get up, or to move from underneath Officer Hayth.” *Id.* at 29. Officer McAllister also saw that Cushingberry was leaning over and yelling at Officer Hayth and that the officer was yelling at her to move. Officer McAllister then directed Cushingberry to step away from the officer and eventually escorted her away by her arm.

As Officer McAllister was dealing with Cushingberry, Officer Hayth was still trying to stop Taylor from turning and getting up from the ground. Thereafter, three or four more assisting officers arrived, including special deputies from the hospital, who “noticed the crowd that was forming outside” the hospital. *Id.* at 15. After Taylor was subdued, Cushingberry was released to take care of her children that were present at the scene.

The State charged Taylor with resisting law enforcement as a Class A misdemeanor<sup>2</sup> and disorderly conduct as a class B misdemeanor.<sup>3</sup> Following a bench trial, the trial court found Taylor guilty as charged. The trial court sentenced Taylor to

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<sup>2</sup> Ind. Code § 35-44-3-3.

<sup>3</sup> Ind. Code § 35-45-1-3.

365 days, with 361 days suspended to probation, for his resisting law enforcement conviction and 180 days, with 176 days suspended, for his disorderly conduct conviction, and the trial court ordered that these sentences be served consecutively. Taylor now appeals.

### **Discussion and Decision**

Taylor argues that that the evidence is insufficient to support his convictions for resisting law enforcement as a Class A misdemeanor and disorderly conduct as a class B misdemeanor. In reviewing a claim of insufficient evidence, we neither reweigh the evidence nor assess the credibility of the witnesses. *Love v. State*, 761 N.E.2d 806, 810 (Ind. 2002). Instead, we look to the evidence most favorable to the verdict and reasonable inferences drawn therefrom. *Id.* We will affirm the conviction if there is probative evidence from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

#### **I. Resisting Law Enforcement**

We first address Taylor’s argument that the evidence is insufficient to support his conviction for resisting law enforcement. To convict Taylor of resisting law enforcement as a Class A misdemeanor as charged, the State was required to prove beyond a reasonable doubt that Taylor “knowingly or intentionally . . . forcibly resist[ed], obstruct[ed], or interfere[d] with a law enforcement officer or a person assisting the officer while the officer [wa]s lawfully engaged in the execution of the officer’s duties[.]” *See* Ind. Code § 35-44-3-3(a)(1); *see also* Appellant’s App. p. 15. Our Supreme Court has interpreted this statute to require that the force element applies to resisting,

obstructing, or interfering with a law enforcement officer. *See Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993). The *Spangler* Court also held that “one ‘forcibly resists’ law enforcement when strong, powerful, violent means are used to evade a law enforcement official’s rightful exercise of his or her duties.” *Id.*

Taylor argues that the evidence is insufficient to support his resisting law enforcement conviction because “[t]hose ‘strong, powerful, violent, means’ are simply not present in the instant case” and that his actions were more like the defendants in *Spangler* and *Ajabu v. State*, 704 N.E.2d 494 (Ind. Ct. App. 1998). Appellant’s Br. p. 5.

In *Spangler*, the Indiana Supreme Court reversed the defendant’s resisting law enforcement conviction because the record did not disclose any evidence from which a reasonable trier of fact could conclude that the defendant had acted with forcible resistance as the Court had defined it. *Spangler*, 607 N.E.2d at 724-25. The *Spangler* Court noted that the defendant refused to accept a service of process at his work and walked away and that there was no evidence that the defendant directed any “strength, power, or violence” towards the law enforcement official or that the defendant made any “movement or threatening gesture” in the direction of the official. *Id.* at 724.

In *Ajabu*, this Court applied the definition of “forcibly” as defined by the *Spangler* Court and overturned a defendant’s resisting law enforcement conviction where the defendant resisted police efforts to remove a flag from his possession. *Ajabu*, 704 N.E.2d at 496. In reversing the conviction, the *Ajabu* Court noted that the evidence that the defendant “twisted and turned a little as he held onto his flag” was evidence that “establishe[d] some resistance” by the defendant but determined that it was “compelled”

to reverse the conviction because the record failed to disclose any evidence that the defendant acted “forcibly” as defined by the *Spangler* Court. *Id.* at 495-96.

The State argues that Taylor’s reliance on *Spangler* and *Ajabu* is misplaced and that Taylor’s actions were more similar to the defendants in *Johnson v. State*, 833 N.E.2d 516 (Ind. Ct. App. 2005), *Guthrie v. State*, 720 N.E.2d 7 (Ind. Ct. App. 2000), *trans. denied*, and *Wellman v. State*, 703 N.E.2d 1061 (Ind. Ct. App. 1998). We agree with the State.

In *Wellman*, we concluded that there was sufficient evidence that the defendant acted with the requisite force in resisting a police officer where the defendant placed his hands against a door frame to hold himself inside his house after he was told that he was under arrest. *Wellman*, 703 N.E.2d at 1064. Due to the defendant’s actions, the officer had to push the defendant through the doorway to get him outside, and once outside, the officer had to lift the defendant onto his feet after the defendant refused to get up and walk. *Id.*

In *Guthrie*, we relied on *Wellman* and affirmed a defendant’s resisting law enforcement conviction where the evidence revealed that police officers had to: physically remove the defendant from a police transport vehicle and place him on the ground after he refused to step out of the vehicle upon arrival at the lockup; lift the defendant to his feet after he refused to stand; and carry the defendant to the receiving area after he leaned back, kept his legs straight, and refused to walk. *Guthrie*, 720 N.E.2d at 9. We held that the defendant “did more than passively resist” as the defendant did in *Spangler* and that his actions were distinguishable from cases such as *Spangler* and *Ajabu*

because the defendant “resist[ed] in some meaningful way that extended beyond mere passive resistance.” *Id.* In other words, the defendant “applied some ‘force’ such that the officers had to exert force to counteract [the defendant’s] acts in resistance.” *Johnson*, 833 N.E.2d at 518 (discussing *Guthrie*, 720 N.E.2d at 9).

In *Johnson*, we relied on *Guthrie* and affirmed the defendant’s resisting law enforcement conviction where the evidence revealed that he turned and pushed away from arresting officers and “stiffened up” when they attempted to place him into a transport vehicle, thereby requiring the officers to exert force to place him inside the vehicle. *Johnson*, 833 N.E.2d at 518-19. The *Johnson* Court noted that its “decision, and even that in *Guthrie* upon which [it] relied, may have moderated the definition of ‘forcibly resist’ as it was written in *Spangler*[,]” *id.* at 519, and “interpreted Indiana Code § 35-44-3-3 as not requiring the application of an overly strict definition of forcibly resist.” *J.S. v. State*, 843 N.E.2d 1013, 1017 (Ind. Ct. App. 2006) (discussing *Johnson*, 833 N.E.2d at 519) (internal quotation marks omitted), *trans. denied*.

Like the defendants in *Guthrie* and *Johnson*, Taylor did more than passively resist and, indeed, used physical means to resist Officer Hayth and acted in a way that required Officer Hayth to exert force to counteract Taylor’s acts of resistance. The State’s evidence reveals that Taylor repeatedly refused Officer Hayth’s instructions to sit on the ground and that, when instructed to lean across the front of the police car, Taylor instead jumped up and sat on the hood of the car and refused to get down. Officer Hayth testified that he had to grab Taylor’s shirt to remove him from the car and that after he then laid Taylor across the front of the car, Taylor stood up and “turn[ed] on” the officer. Tr. p.

13. Officer Hayth further testified that after he “took [Taylor] down to the ground” and placed him flat on his stomach, Taylor began “trying to turn over” and “trying to get up off of the ground.” *Id.* at 13, 14. Officer Hayth indicated that he tried to get control of Taylor by putting one leg across Taylor’s lower back and leaning on Taylor to control his shoulders, but Taylor still tried to turn and get up. Officer Hayth testified that he had to exert force, which he described as “minimal force,” to stop Taylor from “lean[ing]” and “pushing” up against him.<sup>4</sup> *Id.* at 17. Officer McAllister also testified that when Taylor and Officer Hayth were on the ground, Taylor was “trying to turn around and get back up off the ground, and push[ing] himself with [h]is body rotating it around to get up, or to move from underneath Officer Hayth.” *Id.* at 29.

The evidence is sufficient to prove that Taylor acted with the requisite force in resisting Officer Hayth in the performance of his duties. Accordingly, there was probative evidence from which the trial judge, as finder of fact, could have found Taylor guilty beyond a reasonable doubt of resisting law enforcement as a Class A misdemeanor. *See, e.g., Johnson*, 833 N.E.2d at 518-19; *Guthrie*, 720 N.E.2d at 9; *see also J.S.*, 843 N.E.2d at 1017 (concluding that the evidence was sufficient to affirm a juvenile’s adjudication for resisting law enforcement where the evidence revealed that the juvenile flailed her arms, pulled, jerked, and yanked away from an officer).

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<sup>4</sup> Taylor suggests that Officer Hayth testified that Taylor used “minimal force” and that such testimony shows that Taylor did not forcibly resist the officer. *See* Appellant’s Br. p. 5-6. We disagree. First, Officer Hayth did not testify that *Taylor* used “minimal force.” As explained above, Officer Hayth testified that he—Officer Hayth—used “minimal force” to get Taylor under control as Taylor turned, pushed, and leaned against the officer. *See* Tr. p. 17. Second, such testimony does not lead to an inference that Taylor did not forcibly resist but indicates that Taylor applied some force such that Officer Hayth had to exert force to counteract Taylor’s acts of resistance, thereby supporting his conviction. *See Johnson*, 833 N.E.2d at 518-19.

## II. Disorderly Conduct

Finally, we address Taylor’s argument that the evidence is insufficient to support his conviction for disorderly conduct. To convict Taylor of disorderly conduct as a class B misdemeanor as charged, the State was required to prove beyond a reasonable doubt that Taylor “recklessly, knowingly, or intentionally . . . engage[d] in fighting or in tumultuous conduct [or] . . . ma[d]e[] unreasonable noise and continue[d] to do so after being asked to stop[.]” *See* Ind. Code § 35-45-1-3(a)(1), (2); *see also* Appellant’s App. p. 16.

Taylor argues that his conviction for disorderly conduct “must be reversed” because the State failed to prove that he engaged in tumultuous conduct “and” that he made unreasonable noise.<sup>5</sup> Appellant’s Br. p. 6. Taylor, however, apparently fails to recognize that the State charged him in the alternative with tumultuous conduct *or* unreasonable noise and that, under Indiana Code § 35-45-1-3(a), the State was only required to prove one of these bases.

We conclude that the evidence supports Taylor’s conviction under the making unreasonable noise basis.<sup>6</sup> “[I]n order to support a conviction for disorderly conduct [based on making unreasonable noise], ‘the State must prove that a defendant produced decibels of sound that were too *loud* for the circumstances.’” *Johnson v. State*, 719 N.E.2d 445, 448 (Ind. Ct. App. 1999) (emphasis in original) (citations and internal quotations omitted). Both the Indiana Supreme Court and this Court have held that a

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<sup>5</sup> Taylor makes no argument based on a right to speak under the Indiana Constitution.

<sup>6</sup> Because we affirm Taylor’s conviction on this basis, we need not review the alternative tumultuous conduct basis.

loud noise could be found unreasonable where it disrupts a police investigation. *See Whittington v. State*, 669 N.E.2d 1363, 1367 (Ind. 1996); *Johnson*, 719 N.E.2d at 448.

Here, the State presented evidence that as Officer Hayth was trying to place Taylor under arrest, Taylor yelled and screamed to the extent that it caused a crowd to gather. Specifically, Officer Hayth testified that when he approached Taylor in the hospital's parking lot and told him to place his hands behind his back, Taylor became "argumentative" and asked why he was being handcuffed. *Id.* at 9. Taylor then placed his hands behind his back but "was still be[ing] argumentative." *Id.* at 10. Officer Hayth also testified that after he handcuffed Taylor and was trying to get him to sit on the ground, that Taylor "complain[ed] that he couldn't sit on the ground because of his leg," *id.* at 24, that Taylor yelled at the officer that he did not spit on the officer's car and did not need to be arrested, and that Taylor was "just plain vulgar," *id.* at 16. Officer Hayth testified that the volume of Taylor's yelling was "very loud" and that he "had to pretty much yell at [Taylor] also to stop yelling." *Id.* at 17. Officer Hayth testified that Taylor's yelling "pretty much drew the crowd from the inside of the hospital to the outside" and that this crowd was not there prior to his encounter with Taylor. *Id.* Additionally, Officer McAllister testified that when he arrived on the scene, he saw "a large crowd" of people—specifically, fifteen to twenty people—standing near the emergency room entrance, *id.* at 28, and that Taylor was on the ground "yelling," *id.* at 29. Officer McAllister testified that he saw "a good bit of chaos," *id.* at 30, and heard "a lot of screaming," including "screaming" from Taylor, *id.* at 34.

Because the State presented evidence that Taylor produced decibels of sound too loud for the circumstances, we conclude that probative evidence exists from which the trial judge, as finder of fact, could have found Taylor guilty beyond a reasonable doubt of disorderly conduct as a Class B misdemeanor. *See, e.g., Whittington*, 669 N.E.2d at 1367 (noting that a noise could be found unreasonable if it, among other things, disrupts police investigations or is annoying to others present at the scene); *Blackman v. State*, 868 N.E.2d 579, 586 (Ind. Ct. App. 2007) (affirming the defendant’s disorderly conduct conviction where her outbursts disrupted a police officer’s investigation and attracted unwanted attention), *trans. pending*; *Johnson*, 719 N.E.2d at 448 (noting that the trial court’s conclusion that the defendant made unreasonable noise was supported by the evidence because the defendant’s manner of speaking disrupted a police investigation).<sup>7</sup>

Affirmed.

SULLIVAN, SR. J., and ROBB, J., concur.

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<sup>7</sup> Taylor also asserts that the charging information filed by the State was “insufficient to convict” him of disorderly conduct, *see* Appellant’s Br. p. 6, but he makes no cognizable argument to support such an assertion. Thus, he has waived any such argument on appeal. *See* Ind. Appellate Rule 46(A)(8)(a).