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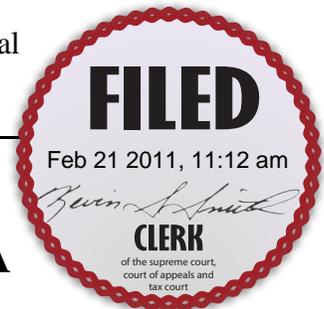
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**IN THE  
COURT OF APPEALS OF INDIANA**

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RANDALL SPEARS, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 49A02-1007-CR-726

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Rebekah Pierson-Treacy, Judge  
Cause No. 49F19-0912-CM-100024

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**February 21, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Following a jury trial, Randall Spears was convicted of Resisting Law Enforcement,<sup>1</sup> a class A misdemeanor, and Disorderly Conduct,<sup>2</sup> a class B misdemeanor. On appeal, Spears presents one issue for our review: Is the evidence sufficient to sustain his convictions?

We affirm.

The facts most favorable to the convictions reveal that on December 10, 2009, Officers Christopher Morgan and Benjamin Owens of the Indianapolis Metropolitan Police Department were dispatched to Spears's home on a report of a domestic disturbance. When the officers arrived, they each parked their respective police vehicles five or six houses down from the reported location of the disturbance. As Officer Morgan stepped out of his vehicle he could hear a male and a female voice yelling. Officer Owens heard the male voice yelling. As the officers approached the house, Lisa Morgan, Spears's girlfriend, motioned the officers to come in. Lisa and Spears had been dating and had a child together.

When the officers entered, Lisa was located in the living room, Spears's mother was sitting on the couch in the living room, and Lisa and Spears's child was in a bouncy seat between the living room and dining room. Spears was nearby, yelling and arguing with Lisa. Lisa appeared to be "extremely upset" and "frantic" and informed the officers that she wanted to pack up necessary items for herself and the child and leave the home. *Transcript* at 123. As soon as the officers entered, Spears turned his anger toward them and began yelling at them using nearly constant profanity and telling them to get out of his house. The

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<sup>1</sup> Ind. Code Ann. § 35-44-3-3 (West, Westlaw through 2010 2nd Regular Sess.).

<sup>2</sup> Ind. Code Ann. § 35-45-1-3 (West, Westlaw through 2010 2nd Regular Sess.).

officers noted that Spears was “very agitated” and was pacing back and forth with his fists clenched. *Id.* at 33. Officer Owens tried to talk to Spears and get him to calm down while Officer Morgan attempted to speak with Lisa. Officer Morgan was continually interrupted by Spears, who kept yelling and screaming at Lisa despite requests that he quiet down. The more the officers tried to diffuse the situation, the more angry and aggressive Spears became. During their investigation, the officers were able to determine that no battery or assault had occurred. They remained in the home, however, and waited for Lisa to collect things for herself and the child.

At some point, Spears made a move toward the kitchen, thereby prompting the officers, out of fear for their safety, to order Spears to stay where he was. Spears became “extremely agitated” and balled his fist and struck a hole in the wall of the kitchen. *Id.* at 46. Spears then got into an aggressive stance by crouching down and balancing on the balls of his feet. Spears was obviously angry and had a red face and clenched fists. Because the officers feared that Spears might lash out at them, they decided to place Spears in handcuffs. When Spears was told to put his hands behind his back, he refused to comply. Instead, Spears stood up and cursed at the officers. Officer Morgan thought Spears was going to try to push past them or strike at them. When Officer Morgan grabbed hold of Spears’s arm in order to handcuff him, Spears immediately “stiffened up his arms” so the officers could not get Spears’s arms behind his back. *Id.* at 60. Spears kept jerking his arms to try to break the grip the officers had on him. In their effort to gain control of Spears, the officers had to take him to the ground. Spears again refused to comply with orders to put his hands behind his

back by tucking his arms underneath his body as he lay on the ground. While on the ground Spears was flailing his body in an attempt to get the officers off of his back. The officers were finally able to get control over Spears when Officer Morgan used his baton to pin Spears to the floor. The officers ended up using two pairs of handcuffs because of Spears's size.

After Spears was in handcuffs, the officers told him that he could sit up. Spears, however, kept trying to get to his knees and stand up despite the officers' orders that he stay seated. Throughout the entire time the officers were at Spears's house, Spears continued to yell and curse; he never calmed down.

On December 10, 2009, the State charged Spears with resisting law enforcement as a class A misdemeanor and disorderly conduct as a class B misdemeanor. After a jury trial, Spears was convicted of both counts. On June 8, 2010, the trial court sentenced Spears to 365 days with credit for 2 days and 343 days suspended for the class A misdemeanor resisting conviction. The trial court further ordered that Spears serve twenty days on home detention and complete anger management classes. While not mentioned during the sentencing hearing, the judgment of conviction shows that the trial court sentenced Spears to a concurrent term of ninety days with all but two days suspended for the class B misdemeanor disorderly conduct conviction.

On appeal, Spears argues that the evidence is insufficient to sustain his convictions. Our standard of review for challenges to the sufficiency of evidence is well settled:

When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Henley*

*v. State*, 881 N.E.2d 639, 652 (Ind. 2008). “We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence.” *Id.* We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Id.*

*Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009).

To sustain a conviction for resisting law enforcement, the State was required to prove beyond a reasonable doubt that Spears “knowingly or intentionally . . . forcibly resist[ed], obstruct[ed], or interfere[d] with a law enforcement officer . . . while the officer [wa]s lawfully engaged in the execution of the officer’s duties.” *See* I.C. § 35-44-3-3. Our Supreme Court has made clear that any action to resist, obstruct, or interfere must be done with force. *Spangler v. State*, 607 N.E.2d 720 (Ind. 1993). In the context of resisting law enforcement, our Supreme Court has defined “forcibly” as “when strong, powerful, violent means are used to evade a law enforcement official’s rightful exercise of his or her duties.” *Spangler v. State*, 607 N.E.2d at 723. On appeal, Spears argues that the State failed to prove that he used force to resist the officers.

In *Ajabu v. State*, 704 N.E.2d 494, 495 (Ind. Ct. App. 1998), this court held that Ajabu did not forcibly resist when he “twisted and turned a little” in order to prevent an officer from taking a flag in Ajabu’s possession. In *Spangler v. State*, this court reversed the defendant’s conviction for resisting law enforcement finding insufficient evidence of force where the defendant resisted service of process by turning and walking away from the officer. In contrast, in *Guthrie v. State*, 720 N.E.2d 7 (Ind. Ct. App. 1999), *trans. denied*, this court affirmed the defendant’s conviction for resisting law enforcement where the defendant

stiffened up and refused to walk. The defendant's conduct in resisting the officers forced the officers to carry the defendant into central receiving. The court reasoned that the defendant's conduct was akin to using force because the officers had to exert force to counteract the defendant's acts in resistance. *Id.* A similar situation was presented in *Wellman v. State*, 703 N.E.2d 1061 (Ind. Ct. App. 1998), wherein a defendant physically resisted leaving his house by placing his hands against a door frame and once forced outside by officers refused to get up and walk. This court affirmed the defendant's conviction for resisting law enforcement finding that the defendant's conduct required the officers to exert force to get the defendant to comply.

In *Small v. State*, 632 N.E.2d 779, 783 (Ind. Ct. App. 1994), *trans. denied*, this court held that the defendant "necessarily engaged in force" when he pulled away from a police officer's grasp. The court distinguished the facts from previous cases, noting that the defendant "did not merely refuse to be placed under arrest or simply walk away; rather, he used power and strength to evade the officer's attempt to effectuate a lawful arrest." *Id.* The court upheld the defendant's conviction for resisting law enforcement.

More recently, in *Johnson v. State*, 833 N.E.2d 516, 517 (Ind. Ct. App. 2005), a defendant in custody "pushed away with his shoulders while cursing and yelling" when an officer attempted to search him. When the officer attempted to put the defendant into a police vehicle, the defendant "stiffened up" and the police officer had to exert physical force to put the defendant in the car. *Id.* Our Supreme Court approved of this court's conclusion that the defendant's actions constituted sufficient forcible resistance to sustain a conviction

for resisting law enforcement. *See Graham v. State*, 903 N.E.2d 963 (Ind. 2009). In *Graham*, the Court noted that “even ‘stiffening’ of one’s arms when an officer grabs hold to position them for cuffing would suffice” to establish forcible resistance. 903 N.E.2d at 966. The Court nevertheless reversed the defendant’s conviction for resisting law enforcement finding that no fair inference could be drawn from the facts that the defendant forcibly resisted even by stiffening his arms.

Here, the facts are clear. Spears engaged in force by pulling away from the officers’ grasp as they attempted to place him in handcuffs. To further thwart the officers’ efforts, Spears stiffened up his arms so the officers could not get his arms behind his back. The force exerted by Spears resulted in the officers forcing Spears to the ground, where he again refused to comply with their orders that he produce his hands for handcuffing. Instead, Spears tucked his hands under his body. While on the ground Spears struggled with the officers, flailing his body in an attempt to get the officers off of his back. Ultimately, the officers were able to exert sufficient force themselves to overcome Spears’s efforts. Spears’s actions in stiffening up his arms, pulling away from the officers, and flailing his body around were more than a mere refusal to be placed under arrest. Such conduct clearly establishes beyond a reasonable doubt that Spears forcibly resisted, obstructed, or interfered with the officers when they attempted to place him in handcuffs. Spears’s claims that the officers “overreacted” and that it was the officers who created the resistance are simply requests that this court reweigh the evidence and reassess the credibility of the witnesses. *Appellant’s Brief* at 11. This we will not do. The evidence presented is sufficient to sustain Spears’s

conviction for resisting law enforcement.

Spears also argues that the evidence is insufficient to support his conviction for disorderly conduct. I.C. § 35-45-1-3 provides in relevant part: “A person who recklessly, knowingly, or intentionally: (1) engages in fighting or in tumultuous conduct; [or] (2) makes unreasonable noise and continues to do so after being asked to stop; . . . commits disorderly conduct, a Class B misdemeanor.” Spears maintains that he did not engage in tumultuous conduct and that he did not make unreasonable noise.

Tumultuous conduct is defined as “conduct that results in, or is likely to result in, serious bodily injury to a person or substantial damage to property.” I.C. § 35-45-1-1 (West, Westlaw through 2010 2nd Regular Sess.). Tumultuous conduct may occur “when the aggressor appears well on his way to inflicting serious bodily injury but relents in the face of superior force or creative resistance.” *Bailey v. State*, 907 N.E.2d 1003, 1007 (Ind. 2009).

In *B.R. v. State*, 823 N.E.2d 301 (Ind. Ct. App. 2005), this could uphold a conviction for disorderly conduct finding that the defendant engaged in tumultuous conduct when the defendant, a student, approached another student in anger and, in the midst of a heated argument, pointed an open or unsheathed knife at the other student. The court noted that the immediate danger of serious bodily injury was defused only when the threatened student struck the defendant and walked away. In *Bailey v. State*, 907 N.E.2d 1003, the evidence revealed that the defendant threw down his drink and coat and stepped towards another in an angry manner with clenched fists at his sides while yelling out a series of obscenities. The defendant backed down only after an officer arrived. The Court found that from the facts,

the trier of fact could have reasonably inferred that serious bodily injury would have resulted had the officer not arrived. The Court thus concluded that the evidence was sufficient to establish tumultuous conduct for a disorderly conduct conviction.

We find the facts of this case to be in line with those present in *B.R.* and *Bailey*. Both officers testified that Spears was pacing back and forth, had clenched fists, was red in the face, and very clearly was “extremely agitated.” *Transcript* at 46. Spears’s anger only escalated as the situation continued. Throughout the entire encounter, Spears was yelling and using nearly constant profanity, first directed at Lisa and then directed at the officers. When prevented from going into the kitchen out of concern for officer safety, Spears responded with profanities and then punched a hole in the wall with his fist. Spears then crouched down into an aggressive stance and was visibly angry. Officer Morgan testified that he believed Spears was going to lash out at him and Officer Owens or at least attempt to push past them. Spears refused to comply with the officers’ commands and remained in an enraged state throughout the entire situation. The trier of fact could have reasonably concluded that serious bodily injury or substantial property damage was likely to occur but for the presence of two police officers willing to use whatever force necessary to keep the situation under control. We will not second-guess the trier of fact’s determination in this regard. The evidence is sufficient to sustain Spears’s conviction for disorderly conduct.<sup>3</sup>

Judgment affirmed.

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<sup>3</sup> Having concluded that Spears’s disorderly conduct conviction is sustainable on the basis of tumultuous conduct, we need not address his claim that he was not making unreasonable noise.

MAY, J., and MATHIAS, J., concur.