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**IN THE  
COURT OF APPEALS OF INDIANA**

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DEVON WALTON, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 32A05-1007-CR-483

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APPEAL FROM THE HENDRICKS SUPERIOR COURT  
The Honorable Karen M. Love, Judge  
Cause No. 32D03-0912-CM-427

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**March 8, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Following a bench trial, Devon Walton appeals his conviction for resisting law enforcement by fleeing,<sup>1</sup> arguing that the State failed to present sufficient evidence to convict him.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

In December 2009, Walton was living with a roommate in an apartment in Camby, Indiana, in Hendricks County. On the night of December 22, 2009, beginning at 8:00 or 9:00 p.m., Walton, an adult, began consuming some vodka or rum mixed drinks. Two other males, friends of Walton's roommate, came over to the apartment at approximately 11:00 p.m. At approximately 1:30 a.m., Walton, who was feeling a "little buzzed" after consuming three to four drinks, and the other two men went outside to an unlit grassy field that was next to the apartment complex to play with Walton's new paintball gun. *Tr.* at 96. The field adjoined a Meijer store parking lot, and Meijer owned the field. The men were running, crouching, and chasing each other as they played paintball.

At approximately 2:00 a.m. on December 23, 2009, Hendricks County Sherriff's Deputy Brian Petree was patrolling the area in his marked police car, specifically doing security checks on businesses in the area. While checking a medical building located across from the Meijer parking lot, Deputy Petree noticed three individuals running and crouching in the field next to Meijer, and he decided to investigate. He drove his vehicle around the Meijer store to get nearer to where he had seen the men. When he pulled up, the individuals,

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<sup>1</sup> See Ind. Code § 35-44-3-3(a)(3).

namely Walton and the two acquaintances, saw his police car and began running. Deputy Petree exited his vehicle and chased them, yelling “Sheriff Department stop!” as loud as he could give the command. *Id.* at 28. He was approximately twenty yards or less away from the men at the time. Walton and the others continued to run, and Deputy Petree pursued them. After ordering the men to stop on at least three occasions, Deputy Petree pulled out his taser gun, which illuminated a red beam through the field, and yelled to the men that if they did not stop he “was going to tase them.” *Id.* at 31. Immediately, the three men stopped and hit the ground.

Deputy Petree had radioed for back-up assistance as soon as he exited his vehicle, so he attempted to keep the three men on the ground in the field until back-up arrived. Two of the men were compliant, but Walton attempted to get up on a couple of occasions, at which time Deputy Petree swept Walton’s legs out from under him so he would stay down. Deputy Stan Chandler arrived, and when he attempted to handcuff Walton, Walton was not cooperative. The two deputies worked together and eventually handcuffed Walton. Once all three men were secured, the deputies noticed the odor of alcohol emanating from all three men.

The State charged Walton with Class B misdemeanor public intoxication and Class A misdemeanor resisting law enforcement by fleeing. During the bench trial, Walton and the other two men with him that night each testified that, upon seeing the police car, they began running. However, each also said that he did not hear Deputy Petree’s multiple orders to stop nor did he know Deputy Petree was chasing them. Walton said that he saw the red beam of

the taser and simultaneously heard Deputy Petree yell “Stop Sheriff’s Department,” at which time all three men immediately dropped to the ground. *Id.* at 85, 99. Walton testified that he has permanent hearing loss in his left ear.<sup>2</sup>

The trial court found Walton guilty as charged, sentencing Walton to sixty days on the public intoxication conviction and sixty days on the resisting law enforcement conviction, to be served concurrently. The trial court also gave Walton credit for time served and suspended the remaining fifty-eight days. Although the trial court imposed two hundred forty days of probation, the trial court explained that the probation would be terminated as soon as Walton notified the court that he had completed: (1) forty hours of community service; (2) substance abuse evaluation; and (3) any recommended treatment for alcohol issues. Walton now appeals his conviction for resisting law enforcement.

### **DISCUSSION AND DECISION**

When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. *Parahams v. State*, 908 N.E.2d 689, 691 (Ind. Ct. App. 2009) (citing *Jones v. State*, 783 N.E.2d 1132, 1139 (Ind. 2003)). We look only to the probative evidence supporting the judgment and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. *Id.* If there is substantial evidence of probative value to support the conviction, it will not be set aside. *Id.* It is the function of the trier of fact to resolve

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<sup>2</sup> After being found guilty, but prior to sentencing, the trial court engaged in a dialogue with Walton, who explained that he had received a general discharge from the Marine Corps due to the medical condition of hearing loss.

conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Yowler v. State*, 894 N.E.2d 1000, 1002-03 (Ind. Ct. App. 2008).

In order to prove that Walton committed resisting law enforcement by fleeing, as charged, the State was required to prove that he (1) knowingly or intentionally, (2) fled from a law enforcement officer, (3) after the officer had, by visible or audible means, identified himself or herself, and (4) ordered the defendant to stop. Ind. Code § 35-44-3-3(a)(3). Here, Walton asserts that the evidence was insufficient to establish that he continued to run after hearing Deputy Petree order him to stop. More specifically, Walton claims that he did not hear Deputy Petree's commands to stop except the last occasion, when Deputy Petree also removed his taser gun, which caused the beam to illuminate, and advised the three men that he would tase them if they did not stop. That is, Walton maintains that he did, in fact, stop and drop to the ground as soon as he knew Deputy Petree was chasing him and thus is not guilty of resisting law enforcement by fleeing.

Deputy Petree, on the other hand, maintains that he was "very close," within twenty yards or less, when he was chasing the men, and was yelling loudly. *Tr.* at 28-29. He testified that in his opinion a person with normal hearing would have heard him. He testified that the three men, running together, some a few steps ahead of others, and running the same direction, did not stop. Deputy Petree testified that he identified himself as being from the Sheriff's department and ordered the men to stop on several occasions before removing his taser gun and warning that he would use it.

It is not for us to determine the truth of whether Walton heard Deputy Petree's repeated commands to stop or, as Walton claims, did not hear Deputy Petree until simultaneously seeing the taser gun's beam. Rather, it was for the trial court to sort out the conflicts in the evidence and determine whom to believe. Our well-settled standard of review compels affirming the trial court's decision.

Affirmed.

CRONE, J., and BRADFORD, J., concur.