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ATTORNEY FOR APPELLANT:

**APRIL R. BLAIR**  
Allen Wellman McNew  
Richmond, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General Of Indiana

**GARY DAMON SECREST**  
Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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DARIN DEILKES, )

Appellant-Defendant, )

vs. )

No. 89A01-0701-CR-8

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE WAYNE SUPERIOR COURT  
The Honorable Darrin M. Dolehanty, Judge  
Cause No. 89D03-0602-CM-266

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**July 17, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

## Case Summary and Issue

Darin Deilkes appeals his conviction of resisting law enforcement, a Class A misdemeanor. Specifically, Deilkes raises the issue of whether the State presented sufficient evidence to sustain his conviction. We affirm, concluding that there was sufficient evidence to support Deilkes's conviction.

## Facts and Procedural History

The facts most favorable to the judgment indicate that, on the evening of February 20, 2006, Deilkes arrived at his father-in-law's house seeking to take Deilkes's wife, Kamera L. Allen-Deilkes, with him. Kamera was residing with her father, J.D. Elmore, because she had gotten into a fight with Deilkes. Elmore told Deilkes to leave or he would call 911. Because Deilkes refused to leave, Elmore called 911, and Wayne County Sheriff's Department Patrolmen Brian Hartman and Chris Blackwell arrived at the scene.

Elmore then told Patrolmen Hartman and Blackwell that Deilkes did not live in the house and that he just wanted Deilkes to leave. Patrolmen Hartman and Blackwell entered the house through the side door and found a man, whom they later identified as Deilkes, leaning up against the kitchen sink and pulling Kamera up to his chest with his arms around her. Kamera expressed to Patrolmen Hartman and Blackwell that she did not want to leave with Deilkes.

An argument began between Deilkes and Patrolmen Hartman and Blackwell that lasted about fifteen minutes. Patrolman Hartman told Deilkes that he was "free to go," because "[t]here was nothing criminal going on at the time." Transcript at 22. Deilkes

replied, “F--- you, and f--- you.” Id. Deilkes also commented to Patrolmen Hartman and Blackwell that he was leaving in one of two ways, either he was going to jail or Kamera was leaving with him. Eventually, Kamera was able to get away from Deilkes and exited the kitchen by going down the house’s hallway. Patrolman Blackwell blocked the hallway to prevent Deilkes from going after her.

Patrolman Hartman testified that, about fifteen or twenty seconds after Kamera got away from Deilkes, Deilkes looked at Patrolmen Hartman and Blackwell with a smirk on his face and said, “Well, we’re on. It’s on.” Id. at 32. Deilkes then placed his head down and ran towards Patrolman Blackwell. “It appeared that he threw his arms around Patrolman Blackwell in an attempt to grab Mrs. Deilkes.” Id. at 24. During his testimony, Patrolman Blackwell was questioned as to whether there was any doubt that Deilkes had charged after him. He responded that there was “no doubt.” Id. at 34. He also stated, “It was time for [Deilkes] to leave. They had asked him numerous times. We’d asked him numerous times.” Id. at 35.

Patrolman Blackwell pepper-sprayed Deilkes, but a struggle still ensued between Deilkes and Patrolmen Hartman and Blackwell. Patrolman Blackwell grabbed Deilkes from the front, and Patrolman Hartman took hold of Deilkes from behind. The three ran into the hallway’s wall and fought their way into a bedroom located off the hallway, knocking down a television. Patrolmen Hartman and Blackwell managed to get Deilkes on the bed and ordered him to give them his hands so they could place handcuffs on him, but he refused. They were ultimately able to handcuff Deilkes and take him outside.

On September 1, 2006, a bench trial was held, and Deilkes was found guilty of resisting law enforcement, a Class A misdemeanor. Deilkes now appeals.

## Discussion and Decision

### I. Standard of Review

Deilkes argues that there is insufficient evidence to support his conviction for resisting law enforcement because he was merely attempting to move past an officer who was blocking the hallway. Deilkes further argues that, until Deilkes was involved in a struggle with Patrolmen Hartman and Blackwell, Deilkes had not “forcibly” resisted, obstructed, or interfered with law enforcement officers, and that the struggle that ensued was a reaction to being pepper-sprayed in the face.

In appeals challenging the sufficiency of the evidence, an appellate court neither reweighs the evidence nor determines the credibility of the witnesses. Davenport v. State, 689 N.E.2d 1226, 1230 (Ind. 1997). The reviewing court must examine the evidence most favorable to the judgment and all reasonable inferences drawn therefrom. Id. If we determine that a rational trier of fact could have found guilt beyond a reasonable doubt, we will sustain the conviction. Id.

### II. Resisting Law Enforcement

In order to convict a person for resisting law enforcement, the State must prove beyond a reasonable doubt that the person knowingly or intentionally forcibly resisted, obstructed, or interfered with a law enforcement officer or a person assisting the officer while the officer was lawfully engaged in the execution of the officer’s duties. Ind. Code § 35-44-

3-3(a)(1). “A person ‘forcibly resists’ law enforcement when he or she uses strong, powerful, violent means to evade a law enforcement official’s rightful exercise of his or her duties; such means include the making of threatening gestures toward the official.” Shoultz v. State, 735 N.E.2d 818, 822-23 (Ind. Ct. App. 2000).

The use of “force” is an essential element of resisting law enforcement as defined by Indiana Code section 35-45-3-3(a)(1). White v. State, 545 N.E.2d 1124, 1125 (Ind. Ct. App. 1989). In White, the police sought to tow a vehicle located on the defendant’s property that the police believed contained stolen property. The defendant refused to permit the tow truck’s entry by standing in a driveway, even after police informed the defendant that he was interfering with a police investigation. Although the defendant disobeyed police orders, we reversed the defendant’s conviction for resisting law enforcement because the State had not shown that the defendant “forcibly” interfered with the police. See id. at 1126.

Unlike the defendant’s passive resistance in White, in Wellman v. State, 703 N.E.2d 1061 (Ind. Ct. App. 1998), the defendant was informed by the police that he was under arrest, but the defendant resisted leaving his house by placing his hands against a door frame. A police officer was forced to shove the defendant through the doorway to get him outside, and once outside, the defendant refused to get up and walk, forcing the police officer to lift the defendant onto his feet. This evidence was sufficient to prove that the defendant acted with the requisite “force” in resisting the police officer in the performance of his duties and, therefore, was sufficient to sustain the defendant’s conviction. See id. at 1064.

In this case, we agree with Deilkes that, until a struggle ensued between Deilkes and

Patrolmen Hartman and Blackwell, Deilkes did not “forcibly” resist, obstruct, or interfere with law enforcement officers. Unlike the defendant in Wellman, Deilkes was not under arrest when he initially encountered Patrolmen Hartman and Blackwell. Patrolman Hartman expressed to Deilkes that he was “free to go,” and that “[t]here was nothing criminal going on.” Patrolmen Hartman and Blackwell just wanted Deilkes to leave Elmore’s house and informed Deilkes of this. Moreover, like the disobedient defendant in White, Deilkes did not comply with the orders of Patrolmen Hartman and Blackwell by refusing to leave the house, but he did not “forcibly” resist the law enforcement officers. Even though Deilkes also directed the words “[f]--- you, and f--- you” at Patrolmen Hartman and Blackwell, Deilkes’s initial acts of disobedience cannot be interpreted as “forcibly” resisting or making threatening gestures toward law enforcement officials.

Nevertheless, a reasonable trier of fact could infer that, after Kamera was able to leave the room, Deilkes used “force” sufficient to sustain his conviction. Patrolmen Hartman and Blackwell were lawfully engaged in the exercise of their duties by responding to a homeowner’s call requesting assistance in removing an unwelcome person from his property.

Once they arrived, Deilkes communicated to Patrolmen Hartman and Blackwell that he intended to leave the house in one of two ways: either he was going to jail or his wife was leaving with him. Kamera expressed to Patrolmen Hartman and Blackwell that she did not want to leave with Deilkes. Soon after this, Deilkes smirked at Patrolmen Hartman and Blackwell and said, “Well, we’re on. It’s on.” Deilkes placed his head down, ran toward Patrolman Blackwell, and positioned his arms around him “as [Deilkes] was trying to force

his way down the hall.” Tr. at 25. Importantly, Patrolman Blackwell testified he had no doubt that Deilkes had charged after him. Thus, rather than Deilkes merely attempting to move past Patrolman Blackwell, as Deilke argues in his brief, a reasonable trier of fact could have determined that Deilkes forcibly resisted and made a threat of force toward Patrolmen Hartman and Blackwell.

Deilkes also argues that he used force toward Patrolmen Hartman and Blackwell only after he was pepper-sprayed in the face by Patrolman Blackwell. However, we refuse to accept this invitation to reweigh the evidence. A reasonable trier of fact could have determined that Deilkes’s forcible resistance took place before Patrolman Blackwell pepper-sprayed Deilkes, and that Patrolman Blackwell pepper-sprayed Deilkes in an attempt to restrain his aggressive behavior.

Despite Patrolman Blackwell’s attempt to subdue Deilkes by pepper-spraying him, Deilkes continued to engage in a struggle with Patrolmen Hartman and Blackwell. Similarly to the defendant’s physical resistance to requests to leave a residence, get up, and walk in Wellman, Deilkes refused to give his hands to Patrolmen Hartman and Blackwell in order for them to handcuff him. As a result, Patrolmen Hartman and Blackwell were required to use force to counteract Deilkes’s resistance.

Under these facts and circumstances, the State presented sufficient evidence from which the trier of fact could infer that Deilkes knowingly or intentionally forcibly resisted, obstructed, or interfered with law enforcement officers who were lawfully engaged in the execution of their duties, and, therefore, the evidence was sufficient to support his conviction

for resisting law enforcement.

Conclusion

The State presented sufficient evidence to sustain Deilkes's conviction for resisting law enforcement. For this reason, we affirm Deilkes's conviction.

Affirmed.

VAIDIK, J., concurs.

SULLIVAN, J., concurs in result.