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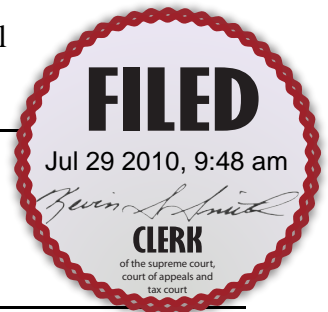
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**IN THE  
COURT OF APPEALS OF INDIANA**

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HARVEY LANCASTER,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 49A02-1001-CR-10

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Linda Brown, Judge  
Cause No. 49F10-0906-CM-56178

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**July 29, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Harvey Lancaster appeals his convictions for Class B misdemeanor disorderly conduct and Class B misdemeanor public intoxication. We affirm.

## **Issue**

The sole restated issue before us is whether there is sufficient evidence to support Lancaster's convictions.

## **Facts**

The evidence most favorable to the convictions is that on June 14, 2009, Indianapolis Metropolitan Police Department Officer Christopher Faulds was informed of a disturbance outside a bar in downtown Indianapolis. When Officer Faulds went to the location, he saw Lancaster standing in a crowd of people, yelling profanities and threatening those around him. Officer Faulds smelled an odor of alcohol on Lancaster and noticed that his speech was slurred and his eyes were bloodshot. Lancaster also almost fell down once, but Officer Faulds prevented him from doing so. Based on his training and experience, Officer Faulds believed Lancaster was intoxicated.

Officer Faulds told Lancaster to leave and go home. Lancaster began walking away, and Officer Faulds left the crowd and crossed the street. However, Lancaster then ran back toward the crowd, waving his fist and yelling profanities and threatening to "beat people up." Tr. p. 9. Officer Faulds prevented Lancaster from hitting anyone and placed him under arrest.

The State charged Lancaster with Class B misdemeanor disorderly conduct and Class B misdemeanor public intoxication. After a bench trial on December 2, 2009, the trial court found Lancaster guilty as charged. Lancaster now appeals.

### **Analysis**

When we review the sufficiency of the evidence to support a conviction, we must consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). “It is the fact-finder’s role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction.” Id. When confronted with conflicting evidence, we must consider it in a light most favorable to the conviction. Id. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. Id.

We first address Lancaster’s conviction for disorderly conduct. Indiana Code Section 35-45-1-3(a) provides:

A person who recklessly, knowingly, or intentionally:

- (1) engages in fighting or in tumultuous conduct;
- (2) makes unreasonable noise and continues to do so after being asked to stop; or
- (3) disrupts a lawful assembly of persons;

commits disorderly conduct, a Class B misdemeanor.

The State alleged in one count that Lancaster both engaged in tumultuous conduct, and that he made unreasonable noise and continued to do so after being asked to stop. On appeal, we may consider the sufficiency of the evidence to support Lancaster's conviction under either theory. See Chubb v. State, 640 N.E.2d 44, 47 n.2 (Ind. 1994). We will focus upon whether Lancaster engaged in tumultuous conduct and need not address whether he made unreasonable noise.

Tumultuous conduct is defined by statute as “conduct that results in, or is likely to result in, serious bodily injury to a person or substantial damage to property.” Ind. Code § 35-45-1-1. This definition may be satisfied if an “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 Bailey, our supreme court held there was sufficient evidence of tumultuous conduct where an unarmed high school student approached a dean in an angry manner with his fists clenched at his sides and yelled obscenities in the dean's face, with the student only backing away when he saw a school police officer nearby. Id.

The evidence in this case is very similar to that in Bailey, particularly in what occurred after Officer Faulds first left the scene. Lancaster went running toward a group of people, waving his fist in the air and yelling profanities and threatening members of the group with physical harm. As in Bailey, it is reasonable to conclude serious bodily injury was likely to result from Lancaster's conduct, but for Officer Faulds's timely intervention and removal of Lancaster from the scene. There is sufficient evidence that

Lancaster engaged in tumultuous conduct so as to support his disorderly conduct conviction.

Turning to Lancaster's public intoxication conviction, the State was required to prove that he was "in a public place or a place of public resort in a state of intoxication caused by the person's use of alcohol or a controlled substance . . . ." I.C. § 7.1-5-1-3. Lancaster does not deny that he was in a public place; with respect to evidence of intoxication, "a non-expert witness may offer an opinion upon intoxication, and a conviction may be sustained upon the sole testimony of the arresting officer." Wright v. State, 772 N.E.2d 449, 460 (Ind. Ct. App. 2002). Evidence of intoxication may include the odor of alcohol on the defendant, verbal abusiveness, red eyes, and being unsteady on one's feet. Id. Slurred speech and being loud, boisterous, and hostile also are relevant. See Gamble v. State, 591 N.E.2d 142, 143 (Ind. Ct. App. 1992).

Here, Officer Faulds testified that he received police academy training on identifying intoxicated persons and has observed many intoxicated persons on the job, and he believed that Lancaster was intoxicated. Aside from Officer Faulds's opinion, there is evidence that Lancaster smelled of alcohol, that his eyes were bloodshot, that his speech was slurred, that he was unsteady on his feet, and that he was acting belligerently. This evidence, combined with Officer Faulds's opinion, is sufficient to establish that Lancaster was intoxicated in a public place.

### **Conclusion**

There is sufficient evidence to support Lancaster's convictions for disorderly conduct and public intoxication. We affirm.

Affirmed.

BAILEY, J., and MAY, J., concur.