ATTORNEY FOR APPELLANT:

**BARBARA J. SIMMONS**
Batesville, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**
Attorney General of Indiana

**RICHARD C. WEBSTER**
Deputy Attorney General
Indianapolis, Indiana

# IN THE COURT OF APPEALS OF INDIANA

| | | |
|---|---|---|
| ADAM TAYLOR, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 49A04-0703-CR-155 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Shatrese Flowers, Commissioner
Cause No. 49F19-0610-CM-194244

**November 7, 2007**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-defendant Adam Taylor appeals his convictions for Disorderly Conduct,[1] a class B misdemeanor, and Refusal to Identify,[2] a class C misdemeanor. Taylor argues that his disorderly conduct conviction is an unconstitutional restriction of his right to engage in pure political expression and that there is insufficient evidence supporting both convictions. Finding no error, we affirm the judgment of the trial court.

FACTS

On October 8, 2006, Indianapolis Police Officer Michael Skeens was patrolling in his vehicle when he observed another vehicle ahead of him suddenly cut across two lanes of traffic. Officer Skeens turned on his emergency lights and effectuated a traffic stop of the vehicle. When the suspect vehicle stopped, Officer Skeens immediately turned on his spotlight and observed the occupants of the vehicle for twenty to thirty seconds, noticing no movement among the occupants. He did not observe any of the occupants remove their seatbelt.

Officer Skeens exited his vehicle, approached the driver's side of the stopped vehicle, and asked for the driver's license and vehicle registration. The officer observed that Taylor, who was sitting in the front passenger seat, was not wearing a seatbelt, and inferred that Taylor had not been wearing a seatbelt while the vehicle was moving. Officer Skeens requested identification from the vehicle's occupants, and although the two passengers in the backseat immediately complied, Taylor refused. The officer requested Taylor's

[1] Ind. Code § 35-45-1-3(2).

[2] Ind. Code § 34-28-5-3.5.

identification several times, even advising Taylor that if he did not have a driver's license or identification card, he could provide his name, address, and date of birth. Taylor again refused.

Officer Skeens approached the passenger side of the vehicle and again requested Taylor's identification. As Taylor again refused the request, he was laughing, looking back at the backseat passengers, drinking juice, and generally refusing to take the officer's repeated requests seriously. At that time, Officer Skeens instructed Taylor to exit the vehicle. Taylor refused. The officer reached into the vehicle, unlocked the door, opened it, and asked Taylor to step out. Taylor began laughing. Officer Skeens reached into the vehicle and applied a wristlock to Taylor's right wrist, at which time Taylor exited the vehicle.

Officer Skeens instructed Taylor to get on the ground, and although Taylor initially began to comply, he then began to stand back up, at which time the officer performed a brachial strike just below Taylor's ear, causing Taylor to fall to the ground immediately. Officer Skeens pinned Taylor to the ground.

After the officer handcuffed Taylor, Taylor began to yell and scream obscenities at Officer Skeens, making threats to "get" him, telling the officer that he was "going to regret it," and informing the officer that "[y]ou don't know who you're f*cking with . . . ." Tr. p. 71-72. Taylor's voice was very loud, and Officer Skeens had to yell over it to instruct Taylor to "be quiet." Id. at 72. Officer Skeens instructed Taylor to "be quiet" nine or ten times, and each time, Taylor's response was "[f]*ck that," followed by a resumption of yelling and screaming threats and obscenities. Id. at 73, 106-07. Two or three minutes after Taylor began screaming, people began emerging from nearby businesses to observe the commotion.

On October 9, 2006, the State charged Taylor with class A misdemeanor resisting law enforcement, class B misdemeanor disorderly conduct, and class B misdemeanor refusal to identify. At the conclusion of the February 15, 2007, jury trial, the jury found Taylor not guilty of resisting law enforcement and guilty of the remaining two charges. On February 15, 2007, following a hearing, the trial court sentenced Taylor to 180 days with 176 suspended for disorderly conduct and to 60 days with 56 suspended for refusal to identify, to be served concurrently, and ordered Taylor to engage in sixty hours of community service. Taylor now appeals.

## DISCUSSION AND DECISION

### I. Disorderly Conduct

Taylor first argues that his disorderly conduct conviction violates his right to free speech as guaranteed by Article 1, section 9 of the Indiana Constitution,[3] inasmuch as the conviction restricted his allegedly pure political expression. We employ a two-step inquiry in reviewing the constitutionality of an application of the disorderly conduct statute. "First, a reviewing court must determine whether state action has restricted a claimant's expressive activity. Second, if it has, the court must decide whether the restricted activity constituted an 'abuse' of the right to free speech." Whittington v. State, 669 N.E.2d 1363, 1367 (Ind. 1996). We will assume that by arresting and prosecuting Taylor for disorderly conduct, the State restricted his expressive activity.

[3] Article 1, section 9 of the Indiana Constitution provides that "[n]o law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write or print, freely, on any subject whatever: but for the abuse of that right, every person shall be responsible."

Turning to the second prong of the test, Taylor argues that his shouted threats and obscenities constituted pure political expression, and we will assume for argument's sake that he is correct. We must determine, therefore, whether Taylor abused his right to free speech by engaging in this expression. Our Supreme Court recently considered an analogous case in which a deputy was investigating complaints regarding a juvenile. J.D. v. State, 859 N.E.2d 341, 343 (Ind. 2007). In the course of the investigation, J.D. repeatedly interrupted at increasing volumes, responding to requests "to stop hollering by stating that she 'did not have to respect no one or nobody that didn't respect her.'" Id. Ultimately, J.D. was arrested and adjudicated delinquent for an act that would have been disorderly conduct had it been committed by an adult. Id. Among other things, J.D. argued that the adjudication violated her right to free expression. Our Supreme Court disagreed, finding that

> J.D.'s alleged political speech consisted of persistent loud yelling over and obscuring of Deputy Gibbons's attempts to speak and function as a law enforcement officer. Because it obstructed and interfered with Deputy Gibbons, J.D.'s alleged political speech clearly amounted to an abuse of the right to free speech and thus subjected her to accountability under [Article 1,] Section 9 [of the Indiana Constitution.]

Id. at 344.

Here, as in J.D., Taylor's alleged political speech consisted of persistent loud yelling over and obscuring of Officer Skeens's attempts to speak and function as a law enforcement officer. Specifically, the record reveals that in response to Officer Skeens's repeated instructions to be quiet, Taylor repeatedly responded by shouting "[f]*ck that," followed by a resumption of yelling and screaming threats and obscenities. Id. at 73, 106-07. Additionally, we emphasize that his yells were loud enough that they disturbed patrons of nearby

businesses, who emerged to observe the commotion. As in J.D., therefore, we find that Taylor's alleged political speech clearly amounted to an abuse of the right to free speech. Thus, he was properly—and constitutionally—held accountable for his actions. Consequently, we hold that Taylor's conviction for disorderly conduct did not contravene his right to free speech as guaranteed by the Indiana Constitution.

Taylor also argues that there is insufficient evidence supporting his disorderly conduct conviction. In evaluating the sufficiency of the evidence supporting a conviction, we neither reweigh the evidence nor judge the credibility of witnesses, focusing instead on probative evidence most favorable to the verdict and the reasonable inferences that may be drawn therefrom. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We will affirm unless no rational factfinder could have found the defendant guilty beyond a reasonable doubt. Clark v. State, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000).

To convict Taylor of disorderly conduct, the State was required to prove beyond a reasonable doubt that he recklessly, knowingly, or intentionally made unreasonable noise and continued to do so after being asked to stop. I.C. § 35-45-1-3(2). The State must demonstrate that the complained-of speech infringed upon the right to peace and tranquility enjoyed by others, which may be established by proving that the defendant produced decibels of sound that were too loud under the circumstances. Johnson v. State, 719 N.E.2d 445, 448 (Ind. Ct. App. 1999); see also Whittington, 669 N.E.2d at 1367 (observing that "[l]oud outbursts could agitate witnesses and disrupt investigations").

Here, the State established that Taylor yelled and screamed at Officer Skeens as the officer was attempting to conduct a police investigation. His voice was very loud, and

Officer Skeens had to yell over it to instruct Taylor to "be quiet," tr. p. 72, which he did nine or ten times. Id. at 73, 106-07. Another officer at the scene also repeatedly directed Taylor to be quiet. Taylor ignored all of the requests to quiet down; indeed, every time an officer told him to be quiet, he responded by yelling "[f]*ck that" and continuing to yell and scream. Id. His tirade was so loud that it caused people to emerge from nearby businesses. Under these circumstances, we find that there is sufficient evidence establishing that Taylor made unreasonable noise after being told to stop.

## II. Refusal to Identify

Finally, Taylor argues that there is insufficient evidence supporting his conviction for class C misdemeanor refusal to identify. To support this conviction, the State was required to prove beyond a reasonable doubt that Taylor knowingly or intentionally refused to provide his name, address, and date of birth, or his driver's license if it was in his possession, to a law enforcement officer who stopped him for an infraction or ordinance violation. I.C. § 34-28-5-3.5.

Here, the record reveals that Taylor was a front seat passenger in a vehicle properly stopped by Officer Skeens for traffic violations. After the officer stopped the vehicle, he turned on his floodlight and observed the passengers for twenty to thirty seconds, then exited his vehicle and approached the suspect car. During that time, he did not observe anyone in the car removing their seatbelt. When Officer Skeens arrived at the driver's side of the

vehicle, he noticed that Taylor was not wearing a seatbelt, which is a class D infraction.[4] The officer requested Taylor's identifying information, which Taylor refused to provide.

Although Taylor was not the driver of the vehicle, when the officer approached the vehicle, he drew a reasonable conclusion that Taylor, a passenger of the stopped vehicle, had committed an infraction by neglecting to wear his seatbelt while the vehicle was in motion. Cf. Tawdul v. State, 720 N.E.2d 1211, 1217 (Ind. Ct. App. 1999) (holding that once a police officer effects a lawful traffic stop, the passenger of the vehicle is also lawfully stopped); see also Hiibel v. Sixth Judicial Dist. Ct. of Nev., 542 U.S. 177, 185 (2004) (holding that a police officer is free to request identification without implicating the Fourth Amendment). Taylor directs our attention to evidence in the record that he argues establishes that he was wearing his seatbelt when the vehicle was stopped, but this is a request that we reweigh the evidence and judge the credibility of witnesses—practices in which we do not engage when evaluating the sufficiency of the evidence. Under these circumstances, we find that there is sufficient evidence supporting Taylor's conviction for class C misdemeanor refusal to identify.

The judgment of the trial court is affirmed.

MAY, J., and CRONE, J., concur.

[4] Indiana Code section 9-19-10-2 requires all front seat passengers of motor vehicles to have a seatbelt fastened securely about their body at all times when the vehicle is in forward motion and Indiana Code section 9-19-10-8 provides that the failure to wear a seatbelt is a class D infraction.